96 p. ✓

MONTANA LEGISLATIVE HISTORY

Chapter 597 19 87

Bill H 397 S _____ Original bill & history ✓ C

H. Committee on Natural Resources			S. Committee on Natural Resources		
Hearing Date(s)	1/30	___C	Hearing Date(s)	3/11	___C
	~~2/10~~ 2/11	___C		3/16	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	_____	___C			

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

3/12	COMMITTEE REPORT--BILL CONCURRED		
3/17	2ND READING CONCURRED	50	0
3/19	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/23	SIGNED BY SPEAKER		
3/23	SIGNED BY PRESIDENT		
3/24	TRANSMITTED TO GOVERNOR		
3/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 244 EFFECTIVE DATE: 10/01/87		

HB 397 INTRODUCED BY SPAETH, ET AL.
INCREASES THE KILOVOLT THRESHOLD FOR TRANSMISSION LINES UNDER THE MONTANA MAJOR FACILITY SITING ACT

1/22	INTRODUCED		
1/22	REFERRED TO NATURAL RESOURCES		
1/30	HEARING		
2/16	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/19	2ND READING PASSED AS AMENDED	65	30
2/21	3RD READING PASSED	68	28
	TRANSMITTED TO SENATE		
2/23	REFERRED TO NATURAL RESOURCES		
3/11	HEARING		
3/17	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/20	2ND READING CONCURRED	38	8
3/23	3RD READING CONCURRED	41	7
	RETURNED TO HOUSE WITH AMENDMENTS		
3/26	2ND READING AMENDMENTS CONCURRED	72	24
3/27	3RD READING AMENDMENTS CONCURRED	69	22
4/01	SIGNED BY SPEAKER		
4/02	SIGNED BY PRESIDENT		
4/02	TRANSMITTED TO GOVERNOR		
4/07	RETURNED WITH GOVERNOR'S AMENDMENTS		
4/08	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	81	11
4/09	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	79	17
	TRANSMITTED TO SENATE		
4/11	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	34	0
4/13	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	48	2
	RETURNED TO HOUSE		
4/16	SIGNED BY SPEAKER		
4/20	SIGNED BY PRESIDENT		
4/20	TRANSMITTED TO GOVERNOR		
4/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 597 EFFECTIVE DATE: 4/23/87		

HB 398 INTRODUCED BY DAILY, ET AL.
LIMITING LEGISLATORS TO THREE BILLS PER SESSION BY CONSTITUTIONAL AMENDMENT

1/22	INTRODUCED		
1/22	REFERRED TO RULES		

HOUSE BILL NO. 397

INTRODUCED BY SPAETH, JACOBSON, CRIPPEN, THOMAS

IN THE HOUSE

JANUARY 22, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
FEBRUARY 16, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 17, 1987	PRINTING REPORT.
FEBRUARY 18, 1987	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 19, 1987	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 20, 1987	ENGROSSING REPORT.
FEBRUARY 21, 1987	THIRD READING, PASSED. AYES, 68; NOES, 28.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 23, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
MARCH 17, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 20, 1987	SECOND READING, CONCURRED IN.
MARCH 23, 1987	THIRD READING, CONCURRED IN. AYES, 41; NOES, 7.
	RETURNED TO HOUSE WITH AMENDMENTS.

	IN THE HOUSE
MARCH 26, 1987	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS CONCURRED IN.
MARCH 27, 1987	THIRD READING, AMENDMENTS CONCURRED IN.
	SENT TO ENROLLING.
MARCH 31, 1987	ENROLLING REPORT.
APRIL 1, 1987	SIGNED BY SPEAKER.
	IN THE SENATE
APRIL 2, 1987	SIGNED BY PRESIDENT.
	IN THE HOUSE
APRIL 2, 1987	DELIVERED TO GOVERNOR.
APRIL 7, 1987	RETURNED FROM GOVERNOR WITH RECOMMENDED AMENDMENTS.
APRIL 8, 1987	SECOND READING, GOVERNOR'S RECOMMENDED AMENDMENTS CONCURRED IN.
APRIL 9, 1987	THIRD READING, GOVERNOR'S RECOMMENDED AMENDMENTS CONCURRED IN.
	TRANSMITTED TO SENATE.
	IN THE SENATE
APRIL 11, 1987	SECOND READING, GOVERNOR'S RECOMMENDED AMENDMENTS CONCURRED IN.
APRIL 13, 1987	THIRD READING, GOVERNOR'S RECOMMENDED AMENDMENTS CONCURRED IN.
	RETURNED TO HOUSE.

IN THE HOUSE

APRIL 14, 1987

RECEIVED FROM SENAT

SENT TO ENROLLING.

House BILL NO. 397

INTRODUCED BY Smith Jacobson

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE THE KILOVOLT THRESHOLD FOR THE PURPOSE OF DEFINING A TRANSMISSION LINE UNDER THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTION 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term

LC 1444/01

does not include a facility or a natural gas or crude oil gathering line 17 inches or less in inside diameter.

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings

INTRODUCED BILL
HB-397

under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection (10), including upgrading to a design capacity covered by subsection (10)(b), except that the term does not include normal maintenance or repair of an existing facility.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of $10 million;

(ii) producing 25 million cubic feet or more of gas

derived from coal per day or any addition thereto having an estimated cost in excess of $10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $10 million; or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 <u>161</u> kilovolts, except that the term does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(c) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of $750,000;

(e) any underground in situ gasification of coal.

(11) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

NEW SECTION. Section 2. Extension of authority. Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 3. Effective date. This act is effective on passage and approval.

-End-

STATUS SHEET

50th LEGISLATIVE SESSION

NATURAL RESOURCES COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURRE IN AS AMENDED DATE
56	1/7/87	1/7/87	1/7/87	Reassinged to another committee.							
154	1/19/87	1/19/87	1/21/87	tabled							
208	1/21/87	1/2/187	1/23/87			1/23/87					
230	1/23/87	1/23/87	1/23/87			1/23/87					
246	1/23/87	1/23/87	2/13/87			2/13/87					
290	1/26/87	1/26/87	1/26/87	1/26/87							
308	1/28/87	1/28/87	2/2/87	2/2/87							
328	1/26/87	1/26/87	2/2/87		2/2/87						
343	1/26/87	1/28/87	1/28/87	1/28/87							
358	1/30/87	1/30/87	2/9/87			2/9/87					
370	1/28/87	1/28/87	2/9/87	(1/28/87 to subcommittee)		2/9/87					
388	1/28/87	1/28/87	1/28/87			1/28/87					
3 297	1/30/87	1/30/87	2/11/87			2/11/87					
404	1/30/87	1/30/87	2/6/87			2/6/87					

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

January 30, 1987

The meeting of the Natural Resources Committee was called to order by Chairman Tom Jones on January 30, 1987, at 1:00 p.m. in Room 312 of the State Capitol.

ROLL CALL: All committee members were present with the exception of Rep. Kadas who was excused.

HOUSE BILL NO. 358: Rep. Francis Bardanouve, District 16, sponsor, stated this bill is an act to revise the use of the water development funds. He stated in the last legislative session, the finance committee found some shortfalls in the bill, and it was found that certain clarifications were needed to be made, regarding the administration of water projects and the policies that accompany these projects. He stated, as written, it states there will be administrative costs involved and charged, and he stated, this is not the cases, therefore, he has some amendments that will take care of that. He stated his amendments will remove the administrative expense to these projects, which run from about $250,000 to $300,000 a year. He stated the Department does have its own expenses through their operating budget. Some day, if the money becomes even shorter, he stated there may have to be a change in policy, however, at the present time, the DNRC absorbs the administrative costs of these water projects. The Department does have many ongoing projects, some of which are not cost involved, others that are, and some of these projects are running in the red year after year, therefore, as long as we have the policy, these projects will continue. He stated it was not clear in the law or in the department rules how the charging should be made, so eventually what this bill does is clarifies the OM charges, and when preparing a project, they shall calculate and report to the water users what they estimate OM charges to be, and also, the cost of the project, which does define how this will be done. It will consider the total cost, and public benefits. For example, it may provide a fishery or may provide water information on various projects, which may be considered a Department cost of the project. It would also minimize the liability of Montana by the repairing of a dam, which takes into consideration public benefit, because if a dam were to break, it would be a heavy liability for Montana. He stated the most important part of the bill is on page 8; and states the determination of costs of works, must be met, and consider the value of public benefits, and the repayment capacity of the water users. A state grant

HOUSE BILL NO. 397: Rep. Gary Spaeth, District 84, sponsor, stated there will be a great deal of testimony both for and against this bill. He stated he feels the bill presents a very important question that we must consider, and he feels as policy makers, we have to look at the policy involved, and in balancing it. This bill deals with the Facility Siting Act, and at the present time, under the Facility Siting Act, power lines of 69 kV or smaller are exempt from that act, and do not have to go through the processes and procedures, hearings and the environmental review that is required. What this would do, is raise that to apply to lines of 161 kV or smaller, which primarily would apply to 100, 115, and 161 kV lines. He pointed out this is a balancing act because when the cost of construction of lines increases that increases the cost to us, as consumers. When we are looking at these lines, a line of 115 or 100 may take considerable amount of time, up to two years and longer to go through the Facility Siting Act, and would cost approximately $500,000 or more, in order to have the Facility Siting apply. He stated on one side, there is the additional cost and time you are placing on the side of the consumer, and on the other side, is that we will lose some public input into the line. One of the things DNRC and the Board of Natural Resources look at, is the corridor and centerline location when constructing those lines. In looking at those locations, you are taking a lot of concerns and input from the people, to which that particular line will go through. That is a very important point, and must be looked at, as far as the balancing act is concerned. He stated that was one of the reasons he looked at the bill, and he had hoped there would be some middle ground somewhere along the way. However, he had talked to all the major parties involved, and it appeared that there could have been some middle ground in presenting the bill, but appears that is not the case now. He stated the committee's responsibility, after considering all testimony, is in balancing the costs, the potential substantial cost on one side, versus the public input we will lose on the other side.

PROPONENTS: Gene Braun, representing the Butte Montana Power Company, submitted testimony (Exhibit 3). He stated currently transmission lines with a design capacity greater than 69 kilovolts are "facilities" and persons constructing them are subject to regulation under the Major Facility Siting Act. MPC believes the 69 kV design capacity limit is arbitrary; and therefore, needs to be reexamined so that only "major" transmission line facilities are regulated. HB 397 allows the legislature to take a needed look at the design capacity limit, and to increase the limit and regulate only those facilities imposing impacts that truly are major. HB 397 does not radically change the facility siting process. If this bill passes, truly major facilities would

still need a certificate of environmental compatibility and public need before they could be constructed. Enactment of HB 397 will facilitate continuing efforts of utility companies like the Montana Power Company to provide reliable electric service in a timely and cost effective manner without causing any harm to the public or the the environment. He urged the comittee to look favorably on this bill and give it a do pass. He distributed copies of a diagram mentioned by Rep. Spaeth for the committee consideration in the passage of HB 397 (Exhibit 3a).

WARD SHANAHAN, representing Joe Dewey, Manager, Chevron Resources, and managing partner of Stillwater Mining Company. He stated their company is planning to expand its mining operation to 1000 tons per day as soon as it can get the electric power to do so. This expansion can provide an additional 150 jobs. But the present limitation on power lines without a full Major Facility Siting Act review will prevent this from happening for at least two years. The company has similar plans for a mine in Sweetgrass County which will require a 161 KVA power line, which will be subject to review under the Hard Rock Mining Impact and Reclamation Acts. A further review of the power line under the Major Facility Siting Act would be a costly and unnecessary delay. He urged the committee to give this bill a do pass. (Exhibit 4).

OPPONENTS: Larry Fasbender, Director, Department of Natural Resources and Conservation submitted testimony (Exhibit 5). He stated the Department agrees that transmission lines of the size this bill proposes to exempt may not have the environmental impacts of larger lines. This fact alone is not sufficient to exempt these lines from the public review process the Major Facility Siting Act affords affected landowners and other concerned parties. If the purpose of this bill is to reduce costs to applicants, there are opportunities for reducing these costs through either rule making or other minor amendments to the Siting Act that the Department has previously offered to pursue with the utilities. Passing this bill would also eliminate any public input into the routing decision on the line. More often than not, the major environmental impacts of a transmission line can be mitigated by changing the location of the line. This means transmission line location decisions are crucial, especially to affected landowners. In absence of any public review process, the utility would negotiate the route of a line through the various landowner's properties. The impacts to public resources, such as waterfowl impacts or the spread of noxious weeds off the right-of-way would not be assessed as part of constructing the line. Landowners and the public have come to expect the right to be involved in decisions that affect them, their environment and their

property. Removing most transmission lines built in Montana from any public review process subordinates landowner's property rights to the utility's right to proceed with a condemnation proceeding in court. There would no longer be a public review of the need for the project, whether the project is the best alternative, or where is the best location for the facility. This bill is a giant step back for public involvement in environmental decisions that affect them or public resources. He suggested you give them the opportunity to allay their concerns administratively, rather than totally exempting these lines from public review. He urged the committee to give HB 397 a "do not" pass recommendation.

RUSS BROWN, representing the Northern Plains Resource Council, submitted testimony (Exhibit 6). He stated NPRC has been reluctantly involved in numerous transmission line siting decisions over the last decade. It is because of that direct involvement with the siting act, that we felt we should oppose HB 397. One of the major concerns NPRC has is that a major aspect of the Major Facility Siting Act has been the provisions that require a balancing of need versus the impact of a potential project. The siting of a transmission line can involve a condemnation action. How can we balance the "public use" of a project if the question of need is not addressed. He stated, in conclusion, NPRC does not feel that this bill would necessarily be doing the utilities any great favor. If you have an early notification process, and review the alternatives and come up with the "best" alternative, and if the public is fully involved in the process, you greatly lesson the chance for problems, particularly costly litigation at a later date. Thus, by going through the Major Facility Siting Act criteria, the utilities can be saved time and unnecessary expense. He asked the committee to give this bill a "do not" pass recommendation.

RICK MEIS, representing the Montana Environmental Information Center, submitted testimony (Exhibit 7). He stated MEIC opposed HB 397, for many of the same reasons that were mentioned in testimony presented by the Northern Plains Resource Council. He urged the committee to not pass HB 397.

JOAN TOOLE representing the League of Women Voters and herself as a member of the Board of Natural Resources, stated they believe this should be very carefully scrutinized regarding the need of this bill, and she felt we must encourage these people involved with these lines, and where they may end up on their property to become more involved, and she pointed out, this was not encouraged in the last

session and with that, she urged the committee to not pass HB 397.

REP. SIMON had questions regarding Mr. Fasbender's testimony, and felt there were conflicting ideas conveyed. He asked Larry if he could clarify, because on the one hand it was stated that they could handle the environmental impacts administratively, however, worried about a decision process. Also, in his testimony, Rep. Simon felt they were conveying major environmental impacts, and he was confused as to what DNRC really feels.

MR. FASBENDER stated the impact comes from building the line. He stated, however, if you can find an alternative to that, that would not require building a line, you would have eliminated any environmental impacts. The Department believes that the first assessment should be made as to whether or not, there is need for the line. He stated he had also pointed out in his testimony, that in some instances, proposals through spoken process were made. When you once assess the need for the line, and the need is there, obviously, there will be some impacts. DNRC thinks that in most cases, with some of those lines, the impacts are most likely low enough to society, that they would be willing to live with those impacts, as long as there is a need for the line. But it first must be decided if there really is a need, and without that decision, in all instances, you will have the impacts.

REP. GRADY asked Mr. Fasbender to give examples of where there would be no need for the lines.

MR. FASBENDER stated he does not pretend to have the engineering or the ability to explain how these things work, but he stated the engineer of the Department can provide this information to them at a later time, that would deal with specifics.

REP. HARP stated he had a concern regarding when the Bonneville Power Administration basically went around the siting act, and wondered if this was not the case on a 500 kV, when they are not even going through the review.

MR. FASBENDER stated there was a case on that, and stated essentially what happened was the court told them to close the line across federal property, and meet the state law. In other words, it was exempt as long as it was crossing private property, and it has not been decided about state property, but it had been performed when it did cross federal property. He stated, therefore, we did have the review as far as the line across federal property.

REP. HARP stated, therefore, in some cases, you had a review, and some cases you did not. He asked if in the 500 kV lines, when dealing with 130 feet high or over structures; concrete footings; major impacts; and no Major Facility Siting Act, has the Department experienced a lot of problems with landowners regarding environmental problems.

MR. FASBENDER stated this was a major controversy when building the Bonneville Power line, and it took a great deal of time before the line was finally sited. He stated, it did create a lot of problems, because of the federal exemption.

REP. HARP asked Mr. Fasbender, presently what the department has under review that would fall under the 100 kV to the 161 kV.

LARRY stated Montana Power could probably best answer this question more directly than himself, as far as the lines are concerned and which specific ones are under current review. He stated there are two projects that he is aware, and are both 100 kV projects.

REP. HARP then asked if there was a division in the Department that did just the siting act, and how many are employed in this area.

MR. FASBENDER stated there is a Facility Siting Bureau within the Department with 4.7 FTEs.

REP. COBB asked Mr. Fasbender if the Board of Natural Resources has ever denied a power line under this act.

MR. FASBENDER stated they set out the rules of the condition, and once this meets the centerline process, we may have altered where those lines have gone. However, as far as he is aware, they have never denied the construction of a line.

REP. HARPER asked Mr. Braun if there was a way to obtain access for further information of ongoing projects. He stated he is aware that the Power Companies are required to file a ten year long range plan to the Public Service Commission, and he assumed that the ten year plan would cover all details of the power line that might come under this act. He asked if he could provide the committee with exactly what power lines are being talked about, and he felt it might be somewhat easier for the committee to deal with this, regarding the magnitude of the change.

MR. BRAUN stated he would be most happy to supply this to the committee, and he pointed out, that they do supply a ten

year long range plan to DNRC which lists all of their anticipated construction and filing of transmission facilities. This information was submitted to the secretary at a later date, and was given to all committee members (Exhibit 8).

IN CLOSING, Rep. Spaeth stated, he felt we have heard a very good discussion and debate on this bill regarding both sides of the question, he stated we still get back to the balancing we must deal with. He stated, obviously, the Major Facility Siting Act is an extremely important act, and we have to decide whether that additional costs of $500,000 or more, and a potential two year or longer delay in that area, is worth what we have on the other side. Granted, there are going to be protections that are going to be lost as far as the public is concerned, but stated, we do have a fair amount of protection built into the system, and he feels that the protections that are lost, are fairly made up in other areas, as far as landowners being involved in the process. He views the need question, and stated he does not see that as a terribly important question under the siting act to be dealt with, even though the Department does feel this is important. He stated the need is generally always found, however, he feels what is really needed is landowner protections. He stated we can minimize the impact for need here and he does not feel it is really a factor when looking at protections for the Facility Siting Act. He also does not feel it can be done just under rulemaking authority, and that is why he felt the bill was important, because this is a major action that we are taking, feels the Legislature has to be involved as opposed to doing a lot of what they are trying to accomplish through general rulemaking. He then urged the passage of this bill to the committee. Rep. Spaeth did mention at this time, that the Montana Mining Association did want him to speak in support of HB 397, on behalf of their organization.

HEARING CLOSED ON HB 397.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 2:55 p.m.

TOM JONES, Chairman

DAILY ROLL CALL

NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date January 30, 1987

NAME	PRESENT	ABSENT	EXCUSED
TOM JONES, CHAIRMAN	✓		
CLYDE SMITH, VICE CHAIRMAN	✓		
KELLY ADDY	✓		
TOM ASAY	✓		
JOHN COBB	✓		
BEN COHEN	✓		
ED GRADY	✓		
JOHN HARP	✓		
HAL HARPER	✓		
MIKE KADAS			✓
AL MEYERS	✓		
JOAN MILES	✓		
MARY LOU PETERSON	✓		
BOB RANEY	✓		
RANDE ROTH	✓		
ANGELA RUSSELL	✓		
BRUCE SIMON	✓		
BILL STRIZICH	✓		
STAFF: EQC HUGH ZACKHEIM			

EXHIBIT 32
DATE 1-30-87
HB 397

WITNESS STATEMENT

NAME Gene Braun (Braun) BILL NO. 397

ADDRESS Butte Montana DATE

WHOM DO YOU REPRESENT? Montana Power Co.

SUPPORT ✓ 397 OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1-30-87
397

HOUSE BILL 397 - INCREASE KILOVOLT THRESHOLD FOR THE PURPOSE OF DEFINING A "MAJOR" TRANSMISSION FACILITY

Currently, transmission lines with a design capacity greater than 69 kilovolts (kV) are "facilities" and persons constructing them are subject to regulation under the Major Facility Siting Act (MFSA). We believe the 69 kV design capacity limit is arbitrary; and, therefore, needs to be reexamined so that only "major" transmission line facilities are regulated. House Bill 397 allows the legislature to take a needed "fresh look" at the design capacity limit, and to increase the limit and regulate only those facilities imposing impacts that truly are major.

The cost of siting (in both time and money) a line that is regulated can be staggering. For a 30 mile, 100 kV line, the cost of compliance can exceed $500,000. The time required to complete the MFSA process can easily exceed two years.

Why are costs so great under the MFSA? The answer is that the process is cumbersome. Compliance with MFSA requires: extensive data gathering by the applicant, preparation of draft and final environmental impact statements by the Department of Natural Resources and Conservation (DNRC), conducting a contested case hearing, awaiting a certificate decision by the Board of Natural Resources and Conservation (BNRC) regarding the environmental compatibility and public need of the transmission line, further data gathering by the applicant on site specific centerline considerations, preparation of a centerline location report by the DNRC and, finally, the awaiting of a decision by the BNRC approving one of the centerlines. The benefits of this involved process undertaken to site smaller transmission lines, simply, do not justify the extensive commitment of time and money.

Through the MFSA, the public can become involved in examining whether or not the transmission line is needed. This is valid public policy for major transmission facilities. For a smaller transmission facility, however,

this review is unnecessary. Smaller transmission facilities are not built unless present data and forecasts show that there is a need to provide more energy to meet growth or to provide system reliability. An application for a transmission facility has never been denied based on a lack of evidence proving need.

Environmental data is gathered and reviewed through the MFSA process to ensure the transmission line is sited with "minimum environmental impacts." The opportunity for utility companies to construct a straight line transmission facility between points A & B, however, are long gone. The Montana Power Company, for example, employs an environmental department to evaluate sites for proposed transmission facilities. Choosing the path of least resistance in order to reduce the need to expend time and money is preferable to expending time and money in condemnation actions. Public relations and public acceptance of facilities are now standard company policy goals. Further, affected land owners must be contacted so that right of ways for the transmission lines may be negotiated and purchased.

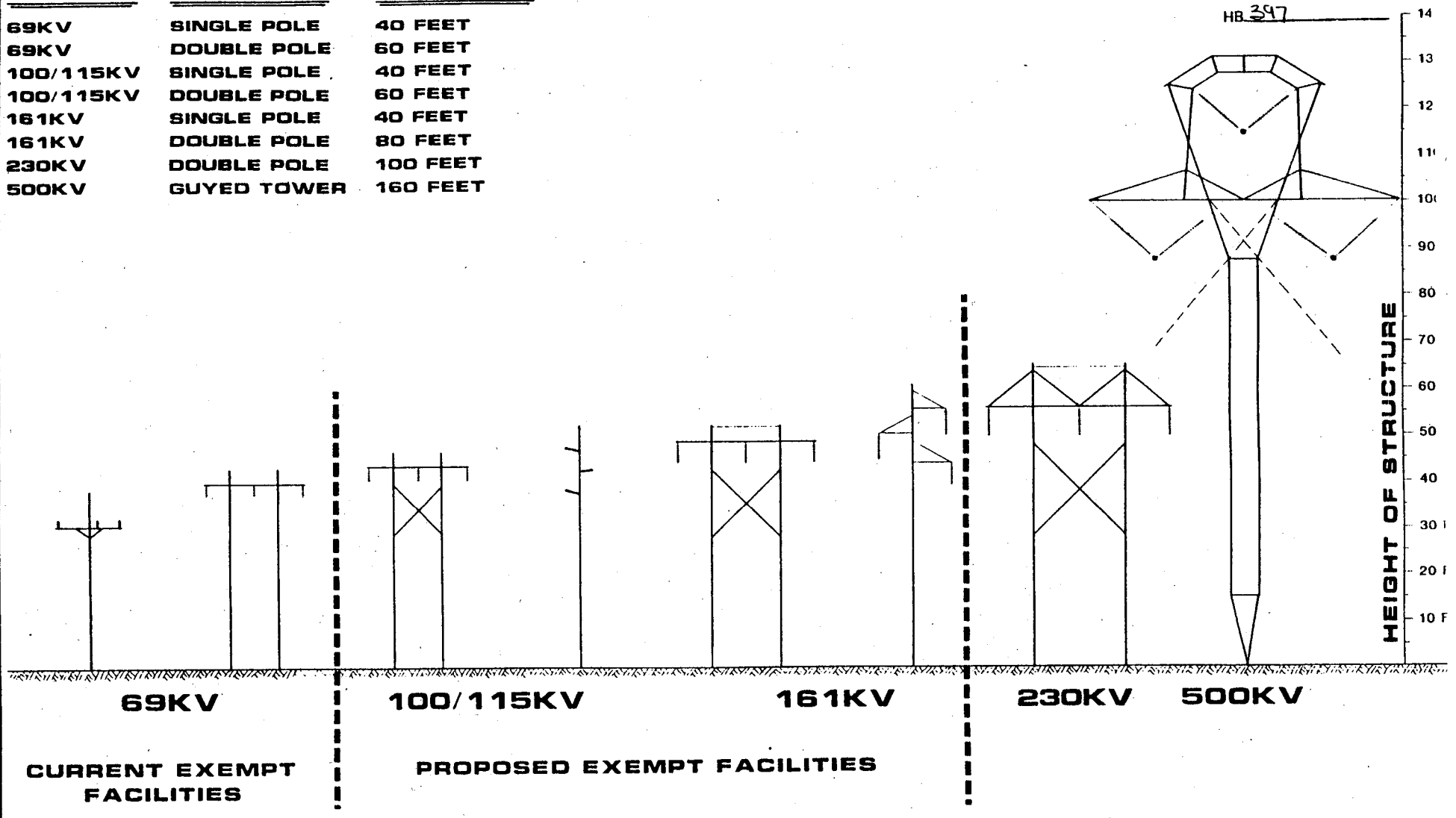
When all factors are considered, the costs of siting smaller transmission lines far outweigh the benefits derived from the process. In fact, the benefits are available without the complicated matrix of regulation imposed by the MFSA.

HB 397 does not radically change the facility siting process. If this bill passes, truly major facilities (transmission lines larger than 161 kV, generating plants, coal gasification plants, etc.) would still need a certificate of environmental compatibility and public need before they could be constructed. Enactment of HB 397 will facilitate continuing efforts of utility companies like The Montana Power Company to provide reliable electric service in a timely and cost effective manner without causing any harm to the public or to the environment.

The Montana Power Company
Arthur V. Wittich

EXHIBIT (3a)
DATE 1-30-87
HB 347

VOLTAGE	STRUCTURE	R/W WIDTH
69KV	SINGLE POLE	40 FEET
69KV	DOUBLE POLE	60 FEET
100/115KV	SINGLE POLE	40 FEET
100/115KV	DOUBLE POLE	60 FEET
161KV	SINGLE POLE	40 FEET
161KV	DOUBLE POLE	80 FEET
230KV	DOUBLE POLE	100 FEET
500KV	GUYED TOWER	160 FEET



THE MONTANA POWER COMPANY
TYPICAL TRANSMISSION STRUCTURES

DATE 1-30-87

NAME Ward A Shanahan BILL NO. HB ~~397~~ 397

ADDRESS 301 First National Bank Bldg.HELENA DATE Jan 30 1987

WHOM DO YOU REPRESENT Chevron Corporation

SUPPORT X X X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY. SEE ATTACHED

Comments: Mr Chairman and members of the committee:

Thank you for allowing me to present the prepared statement of Mr. Joe Dewey the Project Manager of the Stillwater Mine at Nye.

I'm the registered lobbyist for CHevron whose subsidiary Chevron Resources is the managing partner for this important new Platinum mine.

I'll try to answer any questions you may have about Mr Dewey's statement. For those questions I can't answer I'll be pleased to get the answers for you, as soon as I can.

Respectfully.

Ward A. Shanahan

Ward A. Shanahan
Tel: 442-8560 Helena

301 First National Bank Bldg
P.O. Box 1715

HB 397 House Natural Resources Committee January 30 1987

EXHIBIT (4)
DATE 1-30-87
HB 397

Mr Chairman and members of the committee:

My name is Joe Dewey. I'm project manager for Chevron Resources the managing partner of Stillwater Mining Company. The company is completing construction of a 500 ton per day Platinum mine at Nye Montana.

I appreciate the opportunity to appear here today in support of HB 397 which is really an economic growth and jobs bill. Let me explain. Our company is planning to expand its mining operation to 1000 tons per day as soon as it can get the electric power to do so. This expansion can provide an additional 150 jobs. But the present limitation on power lines without a full Major Facility Siting Act review will prevent this from happening for at least two years.

The company also has plans for a similar mine in Sweetgrass County which will require a 161 KVA power line. This mine will be subject to review under the Hard Rock Mining Impact and Reclamation Acts. A further review of the power line under the Major Facility Siting Act would be a costly and unnecessary delay.

I strongly support a DO PASS recommendation on HB 397. I hope you will all give it your unqualified approval. Thank you very much.

EXHIBIT (5)
DATE 1-30-87
HB 397

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

TED SCHWINDEN, GOVERNOR

1520 EAST SIXTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-6699

HELENA, MONTANA 59620

My name is Larry Fasbender, Director of the Department of Natural Resources and Conservation. The Department opposes HB 397 as it would exempt most of the major transmission lines built in Montana from any public review process.

The Department agrees that transmission lines of the size this bill proposes to exempt may not have the environmental impacts of larger lines. This fact alone is not sufficient to exempt these lines from the public review process the Major Facility Siting Act affords affected landowners and other concerned parties. Since utilities' power of eminent domain allows them to take landowners property to build these lines through condemnation proceedings, this bill would effectively remove the public and these landowners from the decision process. If the purpose of the bill is to reduce costs to applicants, there are opportunities for reducing these costs through either rule making or other minor amendments to the Siting Act that the Department has previously offered to pursue with the utilities.

The lines this bill proposes to exempt from the siting review process are 100 kV, 115 kV and 161 kV lines. These lines are part of the bulk transmission grid and are designed to move large amounts of power from where it is generated to substations for distribution to areas of load. For example a 115 kV line is capable of moving the entire output of Canyon Ferry dam. There is not generally a direct benefit to the landowner whose land is crossed by one of these lines as is the case with the power poles that run through your property and provide you with electricity.

Since the benefits of these lines are not readily apparent to these landowners, the first question they always ask in the siting process is, "Is this line needed?" This is the most crucial decision in environmental regulation because if the line is not needed then none of the environmental impacts have to be borne and personal property need not be taken. Once it is

EX. 7 (5)
1-30-87
HB 397

determined that the facility is needed, then the question becomes the level of environmental impact that is acceptable. Removing these lines from the siting process eliminates any public review of the need for these lines.

Whether a particular line is the best way to solve an electrical problem in the system or whether there are better alternatives that solve the problem and do not involve building a particular line is the next question affected landowners and the public want answered. In fact in our most recent transmission line project in the Flathead Valley, a member of the public suggested a non transmission alternative at a public scoping meeting for the project. This alternative involves tying two existing lines together by building a substation where they cross. The utility is currently reviewing the viability of this suggestion as it <u>is</u> a technically feasible solution. This alternative would completely eliminate the environmental impacts of the originally proposed line because the line would no longer need to be built. This review of alternatives is another significant component of the independent assessment that would be foregone if this bill were passed.

Finally passing this bill would eliminate any public input into the routing decision on the line. More often than not the major environmental impacts of a transmission line can be mitigated by changing the location of the line. This means transmission line location decisions are crucial, especially to affected landowners.

In absence of any public review process, the utility would negotiate the route of a line through the various landowners properties. The impacts to public resources, such as waterfowl impacts or the spread of noxious weeds off the right-of way, would not be assessed as part of constructing the line. If a landowner objected to the line crossing their property, the only recourse would be to fight the line through condemnation proceedings. If the adjacent landowners had already agreed to grant a right-of way, then the affected landowner would be stuck between predetermined endpoints on either side of the affected property.

(5)
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397

For example, a landowner whose neighbors already negotiated with the utility for easements along their fence lines might end up with a transmission line crossing cultivated land or a center pivot irrigation system because that was the direct line between his two neighbors' negotiated route with the utility. The middle landowner would have little choice on the location of the line because of decisions made by adjacent landowners. In all likelihood he would be unsuccessful in condemnation proceedings, even if he had the financial resources to pursue the matter through the courts. Such an outcome makes little sense when compared to a public process designed to minimize impacts along the entire length of a transmission line.

Landowners and the public have come to expect the right to be involved in decisions that affect them, their environment and their property. Removing most transmission lines built in Montana from any public review process subordinates landowners' property rights to the utility's right to proceed with a condemnation proceeding in court. There would no longer be a public review of the need for the project, whether the project is the best alternative, or where is the best location for the facility.

This bill is a giant step back for public involvement in environmental decisions that affect them or public resources. I do not see the public interest being served by exempting these transmission lines from public review. We are committed to working with industry to reduce their application requirements for these smaller lines. I would suggest you give us the opportunity to allay their concerns administratively, rather than totally exempting these lines from public review.

Given the concerns I mentioned, I recommend the Committee give HB 397 a "do not" pass recommendation.

NORTHERN PLAINS RESOURCE COUNCIL

Field Office
Box 858
Helena, MT 59624
(406) 443-4965

Main Office
419 Stapleton Building
Billings, MT 59101
(406) 248-1154

Field Office
Box 886
Glendive, MT 59330
(406) 365-2525

EXHIBIT (6)
DATE 1-30-87
HB 397

House Natural Resource Comm.
Testimony in Opposition
to House Bill 397 (Spaeth)
January 30, 1987

Mr. Chairman and Members of the Committee,

For the record, my name is Russ Brown and I work for Northern Plains Resource Council. We are testifying in opposition to House Bill 397.

Mr. Chairman, Northern Plains has been reluctantly involved in numerous transmission line siting decisions over the last decade. It is because of that direct involvement with the siting act that we felt compelled to oppose HB 397s' exempting transmission lines of up to 161 KV from the review process of the Major Facility Siting Act.

Our concerns run deep, but fortunately, our testimony is brief.

*One of the major aspects of the Major Facility Siting Act has been the provisions that require a balancing of need versus the impact of a potential project. The siting of a transmission line can involve a condemnation action. How can we truly balance the "public use" of a project if the question of need is not addressed?

*Over the last several years, we have watched closely as the Departme of Natural Resources & Conservation has worked in conjunction with the utility industry to develop alternative siting criteria. One of the rationals for the early study of the alternatives wwas to insure that the best alternative is chosen, after full public review. We feel that this is alternative selection process is crucial to the intent and mandates of the siting act, and should not be omitted.

* Along these lines, and excuse the choice of words, we feel that

1-30-81
397

that the Siting Act provides a formal process for the early notification of affected landowners along a corridor or centerline. As the utilities well know, this early notification can avoid possible problems of miscommunication and possible adversarial problems at a later date.

Mr. Chairman, in conclusion. We truly don't feel that this bill would necessarily be doing the utilities any great favor. If you have an early notification process, if you review the alternatives and come up with the "best" alternative, and if the public is fully involved in the process, you greatly lesson the chance for problems, particularly costly litigation at a later date. So by going through the Major Facility Siting Act criteria, the utilities can be saved time and unnessary expense.

Mr. Chairman and members of the Committee, thank you for the opportunity to comment in oppostion to HB 397.

Russ Brown
NPRC Staff

EXHIBIT (7)
DATE 1-30-87
HB 397

The Montana Environmental Information Center Action Fund

• P.O. Box 1184, Helena, Montana 59624 (406)443-2520

Mr. Chairman, members of the committee, for the record my name is Rick Meis. I represent the members of the Montana Environmental Information Center.

We oppose HB 397, which would increase the kilovolt threshold for the purpose of defining a transmission line under the Major Facility Siting Act.

One of the important rights we share in this country is to express our concerns about that which goes on around us. This bill proposes to limit that right by exempting most power transmission lines from the public review process, which is now guaranteed under the law.

Currently under MFSA, federal powerline projects, such as Bonneville Power Administration and others which usually are in the 230 to 500 kilovolt range, are exempted. The Board of Natural Resource and Conservation does make suggestions on these lines as to impacts, but there is no requirement to comply. Since MFSA was enacted in 1973, it has been amended to exempt 69 kv lines.

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Now you are being asked to exempt transmission lines up through 161 kilovolts. This makes up the majority of the transmission lines used throughout our state. That just doesn't make sense.

The issue here is not only the environmental effects, but also that property owners will lose their right to be involved in the public review process. Without this bill companies are able to build powerlines and the companies do have the power of eminent domain.

To give you an example of what is at stake here let's look at the major lines that have been approved since the MFSA was enacted. The Board of Natural Resources has approved 27 powerlines. Of these, 2 were exempted under the 69 kv amendment. Five were exempt federal projects. Under HB 397, had it been in effect at that time, 17 of the remaining 20 would have been exempt. That means less thanone out of six would have been reviewed. Of the 27 approved only 3 would have been examined through the MFSA process.

What does the future hold? I will give an example based on the Montana Power Company's Long Range Plan, which covers 10 years, and includes 6 possible transmission lines which have not undergone processing by the Board of Natural Resources. Currently, all 6 would fall within the MFSA review process. But if HB397 passes, only 3 of these will be reviewed.

I want to emphasize that these figures represent MPC's long range plans, and are subject to change! and there are several other companies which may build lines.

Clearly the majority of transmission lines planned for Montana fall into the range of size which this bill proposes to exempt from the Major Facility Siting Act. It just does not seem fair to require Montana's property owners to endure the impacts of transmission line construction without involvement in a public process to evaluate need and possible alternatives.

Under MFSA today, Montana's utility companies are required to show that their proposed transmission lines are the best alternative. MEIC is concerned that if HB 397 passes, utility companies may simply decide on the least costly alternative without consideration for the affected public.

MEIC urges that this committee give HB 397 a "do not pass" recommendation. Thank you.

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POOR COPY

EXHIBIT (8)
DATE 1-30-87
HB 397

MEMORANDUM

TO: Representative Hal Harper

FROM: Art Wittich

DATE: February 2, 1987

RE: Effects from HB 397 on Long Range Plan

In response to your question, HB 397 would effect projects from MPC's Ten Year Plan as follows:

I. Projects already Certified and Centerline approved:

1. Sheridan - Ennis 161 kV
2. Bozeman - Ennis 161 kV
3. Ennis - Big Sky 161 kV
4. Clyde Park - Emigrant 161 kV
5. Bonner Substation 161 kV

II. Projects Certified and pending Centerline approval:

6. Laurel - Bridger 100 kV
7. Judith Gap - Glengarry 100 kV
8. Emigrant - Gardner 69 kV

III. Projects not effected by HB 397 due to design capacity:

9. Three Forks - Helena 230 kV
10. Ovando - Missoula 230 kV
11. Helena - Great Falls 230 kV

IV. Upgrades not effected by HB 397

12. Madison - Three Forks rebuild
13. Great Falls - Two Dot rebuild
14. Great Falls - Morel rebuild

V. Potential Transmission (effect of HB 397 unknown):

15. Three Rivers - Jackrabbit 161 kV
16. Golden Sunlight 161 kV
17. Big Timber - Nye 161 kV

VI. Projects anticipated in near term (and directly effected by HB 397)

18. Anaconda - Phillipsburg - Drummond 100 kV

EXHIBIT (8)
DATE 1-30-87
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19. Roundup - Ivanhoe 100 kV
20. Plains - Superior - St. Regis 100 kV

As you can see, only three MPC projects would be directly effected by HB 397 in the near term. Applicable pages from the 1986 Long Range Plan are attached for your additional reference. If you need any additional information, please let me know.

1986
TRANSMISSION
Ten-Year Plan

Project & General Location	Voltage (kV)	Approx Length (Miles)	1986 1st Qtr	1986 2nd Qtr	1986 3rd Qtr	1986 4th Qtr	1987 1st Half	1987 2nd Half	1988 1st Half	1988 2nd Half	1989	1990	1991	1992	1993	1994	1995
Sheridan-Ennis	161	21.8	R	R	R	R	C	C									
Bozeman-Ennis	161	51	P	P	P	P	C	C	C	P	C	C	R	R	R		
Ennis Big Sky	161	25	P	P	P	P	C	C	C	C	R	R	R				
Laurel-Bridger "B"	100	25	CT	CL	CL	CL	CL	CL	CL	P	P	C	C	R	R	R	
Anaconda-Philipsburg-Drummond	100	52	S	S	S	S	S	F	CT	CT	CT	CT	CL	CL	CL	P	P
Three Forks-Helena	230	50					S	S	S	F	CT	CT	CT	CL	CL	CL	P
Roundup-Ivanhoe	100	41	S	S	S	F	CT	CT	CT	CT	CT	CL	CL	P	P	C	C
Ovando-Missoula	230	60									S	S	F	CT	CT	CT	CL
Plains-Superior-St Regis	100	25					S	S	S	F	CT	CT	CL	CL	CL	P	P
Judith Gap-Glengarry	100	32	CL	CL	CL	CL	P	P	C	C	C	R	R	R			
Clyde Park-Emigrant Line Tap	161	42	C	C	C		C	C	R	R	R						
Emigrant-Gardiner	69	25	CL	CL	CL	P	P	P	P	C	C	R	R				
Bonner #4 Substation	161	15	P	P	P	P	P	P	P	P	C	C	R	R			
Helena Great Falls	230	80							S	S	S	F	CT	CT	CT	CL	CL

F = File Application
S = Study Time
CL= State Approval of Centerline
C = Construction
R = Post Construction Reclamation
CT= State Approval of Certificate
P = Preconstruction

LEX-A6

EXHIBIT (8)
DATE 1-30-87
HB 397

TRANSMISSION PROJECT FOR CONVERSION TO HIGHER VOLTAGE LEVELS OR TO BE RECONDUCTORED

Project & General Location	Voltage (kV)	Approx Length (Miles)	1986 1st Qtr	1986 2nd Qtr	1986 3rd Qtr	1986 4th Qtr	1987 1st Half	1987 2nd Half	1988	1989	1990	1991	1992	1993	1994	1995
Madison-Three Forks Rebuild	50/100	28.9	S	S	S	F	CE	CE	P	C	C	C	R	R	R	
Great Falls-Two Dot Rebuild	100	81.8									S	S	F	CT	CT	CT
Great Falls-Morel Rebuild	100	121.1					S	S	S	F	CT	CT	CT	CL	CL	CL

F = File Application
S = Study Time
P = Preconstruction
C = Construction
F = State Approval of Certificate
CL= State Approval of Centerline
CE= State Approval of Exempt Facility
R = Post Construction Reclamation

EXHIBIT (8)
DATE 1-30-87
HB 397

POTENTIAL TRANSMISSION

Project & General Location	Voltage (kV)	Approx Length (Miles)	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Three Rivers-Jackrabbit	161	30	S	S	S	S	S	S	S	S	S	S
Golden Sunlight-Renova	161	15	S	S	S	S	S	S	S	S	S	S
Big Timber-Nye	161	40	S	S	S	S	S	S	S	S	S	S

S = Study Time

NOTE: These facilities are dependent on new loads or substantial load growth.

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EXHIBIT (8)
DATE 1-30-87
HB 397

VISITORS' REGISTER

NATURAL RESOURCES COMMITTEE

BILL NO. HB 358; HB 397; HB 404; HB 408 DATE JANUARY 30, 1987

SPONSOR BARDANOUVE; SPAETH; HARP; IVERSON

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
ART WITTICH	MPC - Butte	✓397, 404	
Gene Braun	M.P.Co - Butte	397 404	
Gary Fritz	MDNRC	✓ 358, 405	
Steve Fry	MDNRC	358	
Joan Toole	1. LWV MT. 2) SELF	~~397~~ ~~404~~	397 404
D.R. Collins	ASARCO	397	
Gerald M. Smith	Calalta - MRWS	358	
Rick Weis	MT Environmental Info Center		X 397
Larry Fasbender	DNRC	404	397
Don Steuerwalt	"	404	397
RICHARD BONDY	Bo Helena	358	
Russ Brown	Helena NPRC	As Amended 404	397
[illegible]	BUTTE BWC		~~408~~
Ward Shanahan	Helena MT	397	
[illegible]	MRWS		
GEORGE OCHENSKI	MT. ENV. INF. CNTR		~~397~~ amend 404
R.A. Ellis	1735 Sierra Rd E Mont. Water Developments	358 404	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 11, 1987

The meeting of the Natural Resources Committee was called to order by Chairman Tom Jones on February 11, 1987, at 1:00 p.m. in Room 312 of the State Capitol.

ROLL CALL: All committee members were present with the exception of Rep. Peterson who was excused.

HOUSE BILL NO. 631: Rep. Harriet Hayne, District #10, sponsor, stated this is a little oil and gas conservation board bill. She stated she is carrying the bill for the board, and these members want to reduce the size of their board from seven to five. They feel that this size board will have a more efficient, respective operation and also save money in the board member's travel and other expenses.

PROPONENTS: DON LEE, attorney from Shelby, Montana and President of the Montana Oil and Gas Association. He stated this organization is a group of approximately 80 members comprised of companies, individuals in surrounding counties, and oil and gas industry organizations are comprised of users,. third party service companies, etc. He stated they are in support of the bill, for a variety of reasons, the major reason being that, reducing the board from seven to five members will result in more economically, efficient to the board, and it will not adversely affect the board in any way at all in their opinion, or the operation of the board. He stated they see a cost saving measure in reducing the board to five members, and projected at about $3,800 saved, but if every governmental agency or board would reduce its budget on a proportionate percentage basis, there would be a large stake. Even though it appears small, it is a savings, and in these dire economic times faced by the State of Montana any savings is welcome. He stated in his opinion, this would have no adverse affect whatsoever on the board and its operations. He urged the committee to give this bill a favorable recommendation.

DOUG ABELIN, representing the Montana Oil and Gas Association, submitted testimony (Exhibit 1). He stated the board would consist of five members, two from Oil and Gas industries, with three years experience producing oil and gas; one landowner and/or mineral owner, living within oil and/or gas producing counties, but not associated with the oil and gas industry; and two members of the public at large. These members are all chosen by the Governor, as prescribed in the

DISCUSSION:

REP. GRADY asked Rep. Addy to explain what is different about this bill than what is already going on. He felt this bill was going much too broad than what he felt was really necessary.

REP. RANEY stated he felt there was a big difference here, and he stated to him eminent domain should be something that is in the definite interest of the public and in this case, it is similar to one landowner versus another, where one goes over the top of another, and he stated it seems to him, that before you go in and explore to find out if you can, in fact, pull oil out of the ground, you should be able to ascertain before hand that people in your way will give that landowner at least that much.

REP. GRADY stated it is not really a matter of money, however, it is a matter of one individual completely stopping another individual from developing his resource, and it is the resource that the public uses. He stated we are doing it with every other thing in the bill, and he could not see why it was not being done with these underground pipelines.

REP. ASAY stated he felt this would indeed involve personal disputes and difficulties through political action. He stated we just do not need to run the government to settle our personal disputes, emphasizing he felt this was the case with this bill, and he does not think this is the place to settle people's disputes.

QUESTION was then called on the DO NOT PASS motion. The motion CARRIED, with Reps. Grady, Roth, Smith and Jones voting NO.

HOUSE BILL NO. 397: Rep. Cobb moved to reconsider action on HB 397. He then distributed amendments to the committee (Exhibit No. 6). He then explained the amendments basically state, if they cannot get 75% of the landowners or 75% of the property for the centerline location, and they do not agree to the right-of-way, they have to go back to the Major Facility Siting Act, which will force the company to go out and have direct communication one on one with the property owner. It would still involve eminent domain here, however, due to the fact that the Major Facility Siting Act is already eminent domain in this act.

REP. HARPER asked Rep. Cobb if this stated percentage, and also wondered then, why would not it be an advantage to the utilities to be encouraged to ignore small landowners which really do not add up to their 75% at all, simply wasting

time, and why does not it encourage them only to go to big landowners, and asked what would be against that affect coming about as a result of this bill being passed.

REP. COBB stated he felt they would favor the big landowners, and he guessed they would, but he was not positive they were going to. If it were himself, he stated he most likely would, go to the landowners if you have to get the 75%, but we are trying to address a concern about notice to landowners, and hopefully this will happen.

QUESTION was then called on the motion by Rep. Cobb to reconsider action on HB 397. The motion CARRIED unanimously.

REP. COBB then moved the amendments to HB 397 DO PASS.

REP. KADAS reconfirmed that one amendment had already been passed on the bill, and he asked how the first amendment and this amendment match.

STAFF RESEARCHER HUGH ZACKHEIM stated the amendments match properly on page 4, line 12, and stated the figure at the end of line 12 would now read; "115". He stated on page 5, following line 14, a new section was added and that section would read "that when a person plans to construct an electric transmission line, or associated facilities of a designed capacity of more than 69 kilovolts, and up to and including 115 kilovolts, which is more than ten miles in length, public notice must be provided to persons residing in the area, in which any portion of the transmission facility may be located. This notice must be made no fewer that 180 days prior to commencement of acquisition of right-of-way by publication of a summary describing the transmission facility and the proposed location of the facility in those newspapers that will substantially inform those person of the construction". He emphasized this would alleviate conflicts, and also pointed out the committee had attached the notice provision and changed the kilovoltage to 115 in previous action on HB 397.

REP. MILES had concerns with the language being proposed by Rep. Cobb and asked him to please explain why he had proposed 75% of the property, instead of 75% of the landowners, being curious as to how you would handle a situation where a 100 mile stretch, with maybe one person owning 80 miles of it, and the other four or five landowners may have smaller sections, but one person could overrule all the other landowners, and she stated she just doesn't want to get into the case of property versus the property owners.

REP. ADDY stated he felt he would rather use the land then the landowners because in the situation she had just described, there are those people that own 20 miles of the land, and he stated he'd rather us be the amount of property.

REP. COBB then stated he felt it would be easier to do it this way, and involve the land, hopefully to alleviate some of the conflicts as she had described.

REP. SIMON spoke in favor of the amendment stating he felt it was important to have that right-of-way, and with the requirement of having 180 day notice before acquiring the right-of-way, and notice requirement to everyone that may be affected. He stated now this amendment states, the only way they can get out from under the Major Facility Siting Act, is to go out and agree with 75% of the landowners, only property owners along that route, and to get the right-of-way, in order to get out from under this act.

REP. GRADY spoke in favor of the amendment for many of the same reasons. However, he stated property may be stated better than the landowners, because presently, most of these power lines are getting into some of the smaller areas, with subdivisions. @hen talking about property owners, you could be talking about a large amount of people, with these smaller areas involving more people, and when it addresses property owners, he felt you could be talking about every individual with property on that line.

REP. HARPER asked Rep. Cobb if he would have objections to making a slight amendment to his amendment, by changing "residents" to "owners". Secondly, looking at the end of the sentence, you could state 75% of the land as going with the original amendment, have agreed with the utilties preferred centerline, and he stated it is one thing to agree with the route they want to take, but it is another thing to agree with one of their options. The way it would read now, is 75% of the land or the persons who own 75% of the land, agree with this thing they are out from under the act.

REP. COBB stated he had no objection regarding changing "owners" to "residents", as proposed by Rep. Harper. He stated however, he would prefer just stating centerline across the property there, <u>their own individual property</u>, and not deciding what someone else's property five miles down the road is.

REP. HARPER stated this makes sense to him, agreed with Cobb and felt they would leave this up to Hugh for the final draft.

REP. RUSSELL stated it seems as if the committee were making concessions in order to get this bill through. She wondered if the requirement is to have 75%, then why not just go ahead and go under the Major Facility Siting Act, commenting she felt this was the major purpose of the act.

REP. COBB stated currently the law states that if you are above 9, your are automatically under the Major Facility Siting Act, where all the people have right-of-way agreement or not. What this bill does, is take anything below 115 our of the facility siting act, unless more than 25% of the landowners object to it, then they would go back under the Major Facility Siting Act.

REP. MILES had concerns about the notification process, and wondered if an amendment would help clarify the need for the notification requirements to the Department of Natural Resources.

REP. COBB stated he felt this could possibly be solved with an amendment and he would leave this up to Hugh to draft if the committee so decided.

REP. SIMON stated in considering this, and if everything comes to an agreement regarding the landowners, and we do not have to go through the Major Facility Siting Act, he asked why do we have to make sure the Department of Natural Resources has to be notified.

REP. COBB stated if it was agreeable to the committee, when the 180 day notice is received, a clause could be included to let DNRC know that the 180 day notice was given.

REP. ADDY stated his problem with the amendment is he feels the amendment defeats the central purpose of the Major Facility Siting Act. Because the inquiry is no longer, he asked what is the minimal environmental impact that we can design this centerline with. The question is, which way will 76% agree, and if that is the maximum environmental damage, the consensus is, "the heck with it, we are going that way instead of this way".

He stated if we go with the amendment, with this environmental consideration in facilities like this, we can just kiss them goodbye.

REP. COBB then moved the question on the amendments including the amendment proposed on notification to DNRC.

REP. HARPER asked Rep. Addy if he thought the environmental impact would minimize, if the bill was passed in its original form, or with these kinds of amendments in his opinion

REP. HARPER asked Rep. Addy if he thought the environmental impact would minimize, if the bill was passed in its original form, or with these kinds of amendments in his opinion should be subjacated to the interest of the landowners. He asked which he felt more fair.

REP. ADDY stating if you are looking at the whole purpose of the Major Facility Siting Act, he thinks the bill would be better without the amendments.

REP. GRADY stated he feels this addresses what the argument was about in the hearing, the landowner. He stated Rep. Harper got on that right away and was trying to protect the landowner, and we have done that to this. He felt something should be left up to the landowner, especially with these lines going right through their property.

QUESTION was called on the proposed amendments. A roll call vote was requested by the Chairman. The motion CARRIED, 13-5.

REP. COBB then moved HB 397 DO PASS AS AMENDED. Question was then called. The committee asked for a roll call vote. The motion CARRIED 10-8. See Standing Committee Report Nos. 1-7.

HOUSE BILL NO. 416: Rep. Grady moved HB 416 DO PASS.

REP. GRADY stated there had been amendments proposed, to include the small tanks. he stated he did not agree with the inclusion of smaller underground tanks last session, and he would not now. He felt the bill as is, is very well written.

REP. SIMON stated there had been concerns voiced about the language concerning the more stringent regulations which appear on page 9 of the bill. He stated testimony was that this would suggest tougher regulations, but it was probably not necessary to have stricter regulations than the federal. We then moved to amend on page 2, line 15, strike "or more stringent", which would make it equal to the federal program, in order to meet the needs of Montana.

REP. MILES disagreed with the amendment, and stated she proposed to replace the word "stringent" with the word "comprehensive" which would lesson the language, however, not making the regulations tougher.

QUESTION was then called, on the amendment proposed by Rep. Miles. The motion CARRIED, with Rep. Cobb voting NO. See Standing Committee Report Nos. 1-2.

DAILY ROLL CALL

NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 11, 1987

NAME	PRESENT	ABSENT	EXCUSED
TOM JONES, CHAIRMAN	✓		
CLYDE SMITH, VICE CHAIRMAN	✓		
KELLY ADDY	✓		
TOM ASAY	✓		
JOHN COBB	✓		
BEN COHEN	✓		
ED GRADY	✓		
JOHN HARP	✓		
HAL HARPER	✓		
MIKE KADAS	✓		
AL MEYERS	✓		
JOAN MILES	✓		
MARY LOU PETERSON			✓
BOB RANEY	✓		
RANDE ROTH	✓		
ANGELA RUSSELL	✓		
BRUCE SIMON	✓		
BILL STRIZICH	✓		
STAFF: EQC HUGH ZACKHEIM			

CS-30

STANDING COMMITTEE REPORT

FEBRUARY 16 19 87

Mr. Speaker: We, the committee on NATURAL RESOURCES

report HB 397

☒ do pass ☐ be concurred in ☒ as amended
☐ do not pass ☐ be not concurred in ☐ statement of intent attached

REP. TOM JONES
Chairman

'AN ACT TO INCREASE THE KILOVOLT THRESHOLD FOR THE PURPOSE OF DEFINING A TRANSMISSIONLLINE UNDER THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTION 75-20104, MCA; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE."

BEST COPY AVAILABLE

1. Title, line 4.
Following: "INCREASE"
Insert: "UNDER CERTAIN CONDITIONS"

2. Title, line 7.
Following: "ACT"
Insert: "PROVIDING FOR NOTICE TO THE PUBLIC AND TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION;"

3. Page 4, line 12.
Strike: "161"
Insert: "115"

4. Page 4, line 13.
Following: "term"
Insert: ": (i)"

5. Page 4, line 16.
Following: "length;"
Insert: "and (ii) does include an electric transmission line with a design capacity of more than 69 kilovolts and up to and including 115 kilovolts for which owners of more than 25% of the property comprising the proposed centerline location have not agreed with the applicant to a right of way or an option for a right of way for the centerline location on their property;"

FIRST WHITE
reading copy (color)

6. Page 5.
Following: line 14
Insert: "NEW SECTION. Section 2. Notice requirement for certain electric transmission lines. Whenever a person plans to construct an electric transmission line or associated facilities of a design capacity of more than 69 kilovolts and up to and including 115 kilovolts that is more than 10 miles in length, public notice must be provided to persons residing in the area in which any portion of the electric transmission facility may be located and notice must be provided to the department. This notice must be made no less than 180 days prior to the commencement of acquisition of right of way by publication of a summary describing the transmission facility and the proposed location of the facility in those newspapers that will substantially inform those persons of the construction and by mailing such a summary to the department."

Renumber subsequent sections

7. Page 5.
Following: line 18
Insert: "NEW SECTION. Section 4. Codification instruction. Section 2 is intended to be codified as an integral part of Title 75, chapter 20, part 2, and the provisions of Title 75, chapter 20, part 2, apply to section 2."

Renumber: subsequent section

ROLL CALL VOTE

NATURAL RESOURCES COMMITTEE

DATE Feb. 11, 198 BILL NO. HB 397 ~~NUMBER~~ 2:35 p.m.

NAME	AYE	NAY
TOM JONES, CHAIRMAN	X	
CLYDE SMITH, VICE CHAIRMAN	X	
KELLY ADDY		X
TOM ASAY	X	
JOHN COBB	X	
BEN COHEN		X
ED GRADY	X	
JOHN HARP	X	
HAL HARPER	X	
MIKE KADAS	X	
AL MEYERS	X	
JOAN MILES	X	
MARY LOU PETERSON	X	
BOB RANEY		X
RANDE ROTH	X	
ANGELA RUSSELL		X
BRUCE SIMON	X	
BILL STRIZICH		X
STAFF: HUGH ZACKHEIM		
TALLY	13	5

Lisa Roth
Secretary

Chairman

MOTION: Rep. Cobb moved the amendments to HB 39 DO PASS. A roll call vote was requested by the Chairman. The motion CARRIED 13-5.

Form CS-31
Rev. 1985

ROLL CALL VOTE

NATURAL RESOURCES COMMITTEE

DATE Feb. 11, 198 BILL NO. HB 397 NUMBER 2:40 p.m.

NAME	AYE	NAY
TOM JONES, CHAIRMAN	X	
CLYDE SMITH, VICE CHAIRMAN	X	
KELLY ADDY		X
TOM ASAY	X	
JOHN COBB	X	
BEN COHEN		X
ED GRADY	X	
JOHN HARP	X	
HAL HARPER		X
MIKE KADAS		X
AL MEYERS	X	
JOAN MILES		X
MARY LOU PETERSON	X	
BOB RANEY		X
RANDE ROTH	X	
ANGELA RUSSELL		X
BRUCE SIMON	X	
BILL STRIZICH		X
STAFF: HUGH ZACKHEIM		
TALLY	10	8

Lisa Routt
Secretary

Chairman

MOTION: Rep. Cobb moved that HB 397 DO PASS AS AMENDED. Question being called, a roll call vote was taken. The motion carried 10-8.

Form CS-31
Rev. 1985

EXHIBIT (6)
DATE 2-11-87
HB 397

2/11/87

HOUSE BILL 397 - INTRODUCED BILL

1. Page 4, line 13.
Following: "term"
Insert: ":(i)"

2. Page 4, line 16.
Following: "length;"
Insert: "and (ii) does include an electric transmission line with a design capacity of more than 69 kilovolts and up to and including 115 kilovolts in which residents owning more than 25% of the property comprising the centerline location have not agreed to a right of way or an option for a right of way with the applicant."

CHAIRMAN--SEN. TOM KEATING
NORMAL SCHEDULE==> SITE: ROOM 405 DAYS: M-W-F TIME: 1:00 P.M.

SECRETARY-NADINE MCCURDY

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0208	2/02	3/04		CONCUR		3/4
ADDY, KELLY			ALLOWING STATE OIL LESSEES TO DEDUCT PROPORTIONALLY OIL TRANSPORTATION COSTS			
HB0230	1/30	2/11 2/24		CONCUR		2/24
HANSON, MARIAN			AN ACT TO GENERALLY REVISE THE STRIP AND UNDERGROUND MINE RECLAMATION ACT			
HB0239	2/02	3/04		CONCUR		3/4
BRANDEWIE, RAY			REVISE COORDINATE SYSTEM USED FOR LAND SURVEYS			
HB0246	2/21	3/11		CONCUR		3/11
COBB, JOHN			REQUIRING WELL-SPACING UNIT; POOLING APPLICANTS TO GIVE ACTUAL NOTICE			
HB0290	1/30	3/04		CONCUR		3/4
SPAETH, GARY			AUTHORIZES DNRC TO ISSUE PERMITS FOR LARGE GROUNDWATER USES IN CARBON COUNTY			
HB0308	2/10	3/06		CONCUR		3/6
MILES, JOAN			EXEMPTS DAMS FROM THE DAM SAFETY ACT THAT ARE SUBJECT TO THE MFSA			
HB0343	2/19	3/06		CONCUR		3/6
DONALDSON, GENE			GIVES A REBUTTABLE PRESUMPTION TO CERTAIN FLOODWAY & FLOODPLAIN DESIGNATIONS			
HB0358	2/16	3/18		CONCUR		3/18
BARDANOUVE, FRANCIS			REVISE USE OF WATER DEVELOPMENT FUNDS			
HB0370	2/17	3/11		CONCUR		3/11
ASAY, TOM			GENERALLY REVISES LAWS RELATING TO THE OPENCUT MINING ACT			
HB0388	2/05	3/09		CONCUR AS AMENDED		3/9
ASAY, TOM			CLARIFIES THE DETERMINATION OF MARKET VALUE OF WATER PROJECTS			
HB0397	2/23	3/11 3/16		CONCUR AS AMENDED		3/16
SPAETH, GARY			INCREASES THE KILOVOLT THRESHOLD FOR TRANSMISSION LINES UNDER THE MFSA			

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

March 11, 1987

The meeting began at 1:00 p.m., in Room 405 of the State Capitol Building and was called to order by Senator Gage, who was asked by the committee members to preside since the chairman and vice-chairman were in other committees presenting bills.

ROLL CALL: All members present.

CONSIDERATION OF HOUSE BILL 397: Representative Gary Spaeth, District 84, introduced HB 397, which would amend the Facility Siting Act that was enacted in 1973. At the present time, lines 69kv or less are exempted from the requirements of environmental review by the Board of Natural Resources. HB 397 would exempt power lines of up to 115kv. Rep. Spaeth then distributed amendments to the members of the committee. (Exhibit 1) Amendments do not change the bill, Rep. Spaeth explained, but amendments contain better and clearer language. If the amendments are adopted, however, HB 397 would exempt power lines with 115kv or under from MFSA provided that 75 percent of the landowners along with 75 percent of the power line route agree. If there is any controversy by landowners, then facility would have to go through the act. Rep. Spaeth said that the bill takes into account public interest and the amendment would give landowners more "say". It was Rep. Spaeth's contention that landowners and utility companies would deal in good faith on an "across the table" basis as opposed to boardrooms of the Natural Resources Department. HB 397 would save the consumers money because going through the siting process costs the utility company an exorbitant amount of money. Rep. Spaeth concluded his introduction by saying that there is not much difference between a 69kv line and a 115kv line.

PROPONENTS: Arthur V. Wittich, a representative from the Montana Power Company, who distributed written testimony (Exhibit 2), answered that HB 397 is a fresh look at the MFSA and that no law should be considered inviolate. Mr. Wittich stated that times change, ideas change, people change, and so should the law. Mr. Wittich testified that HB 397 only affects the smaller transmission lines and does not "gut" the MFSA. The explanation was made by Mr. Wittich that HB 397 prevents regulatory over-kill that is going on and explained that the process of the orginal act which required:

1) that the Utility Co. or Co-op show that the facility is needed.

2) that the facility impose the minimum environmental impacts. Mr. Wittick said that for major facilities, that is no burden, but for smaller facilities, it is a big burden because the process takes two to three years. At that point, Mr. Wittich gave the committee members a diagram (Exhibit 3) that shows typical transmission structures.

Mr. Wittich told the committee that when HB 397 was drafted MPC analyzed where the line should be drawn. MPC the determined the line should be drawn at the point between 161 kv lines and 230 kv lines (major structures, major right-of-way widths, heights, etc.). However, to accommodate some interests in the House of Representatives, MPC scaled this decision back to 115 kv and added the 75% clause. Mr. Wittich said MFSA amending time had come, but that HB 397 would still allow for major facilities to fall under the MFSA.

Rep. John Patterson, House District 97, Yellowstone County, read aloud a letter that had been sent to him by Mr. Jim Follensbee (Exhibit 4). Rep. Patterson listed the 14 REA members of the Central Montana Electric Co-op.

Beartooth	McCone	Tongue River
Big Flat	Mid-Yellowstone	Valley
Fergus	Northern	Vigilante
Hill Co.	Park	Yellowstone
Marias	Sun River	

Rep. Patterson said that HB 397 gives landowners an opportunity to sit down with the REA members and bargain. Had HB 397 been in effect 10 years ago, Rep. Patterson shared that he would have been able to have input as to where the power lines would be located on his land. Rep. Patterson recommended that the committee members telephone their respective REA Boards if they have any questions.

Ward Shanahan, who represented Chevron, presented a statement written by Mr. Joe Dewey, Manager of Stillwater Platinum Mine. (Exhibit 5) Mr. Shanahan stated that the Stillwater Mine already was subject to review by the Hardrock Mining Impact Act and Reclamation Act and further review of the power line under the MFSA would cause unnecessary expense and delay. HB 397 was supported by Chevron, and Mr. Shanahan urged passage of HB 397.

Shirley Ball, who represented Montana Women Involved in Farm Economics, related that the organization was in favor of HB397.

OPPONENTS: Don McIntyre, Department of Natural Resources, said that HB 397 would give the landowner no greater rights than landowners have in a condemnation proceeding. The DNRC opposed HB 397 because Mr. McIntyre testified affected landowners will not have a "say" in routing decisions that affect their privately owned land. Mr. McIntyre stated that, if 75 percent of the landowners along a route agreed to grant easements, the other 25 percent of landowners would not have any "say" in the routing decisions across their lands. (Exhibit 6)

Dean Peterson, Judith Gap, testified that he was involved as one of the landowners who convinced DNRC to order the power line placed along a route preferred by landowners. Mr. Peterson said that the ultimately approved route was along the abandoned Milwaukee Railroad right-of-way. He opposed HB 397 because he said he had experience with MFSA and "I know that the Montana Facility Siting Act works." (Exhibit 7)

Pat Melby, represented himself as well as Beaver Creek landowners and admitted that Montana Power Company was very fair--there was a good hearing. DNRC felt it would make more sense to have the power line parallel to existing corridor. Mr. Melby stated that the landowners were highly impressed with the process. He expressed concern that amending MFSA would perhaps allow MPC to "go back on their word and choose the foothill route once again." Therefore, Mr. Melby recommended to the committee that HB 397 not be passed.

Debi Brammer, Montana Association of Conservation Districts, stated that public review is essential. Without any public review processes, Ms. Brammer said that landowners' rights would become secondary to utility rights. She explained that a public review would cause the best route to be built guaranteeing fewer problems for an agricultural operation. (Exhibit 8)

Sue Johnson, President of the Bear Creek Council, a citizens' group with members who are ranchers, outfitters, small business people and others, most of whom are property owners, live along the possible location of an upgraded power line to a proposed gold mine at Jardine. Ms. Johnson said a public review is essential to assure that impacts of transmission lines would be minimized to landowners along the route and that the selected route would represent the least possible impact. (Exhibit 9)

Claudia Massman, Montana Environmental Information Center Action Fund, testified that there are two main reasons for opposing HB 397: 1) Landowners would no longer have a "say" in where the routing should be; and 2) Utilities would be

able to select a preferred alternative on the basis of economic considerations alone, without regard to environment consequences or landowners' interests. (Exhibit 10)

At this time, Senator Gage relinquished the chairmanship to Senator Keating who had just entered the meeting.

Joan Toole, DNRC, read a letter from 18 families living near Laurel who opposed HB 397.

Sandy Seaton, Park County, testified that Park County is the site of increased development that will need power. Ms. Seaton opposed HB 397 for the same reasons as previous opponents stated. (Exhibit 11)

Jerry Jack, Montana Stockgrowers, opposed passage of HB 397 because he felt that the bill would adversely affect the rights of landowners who might want to oppose transmission line's location. (Exhibit 12)

Jeanne-Marie Souvigney, Sierra Club, objected to HB 397 because a majority of landowners would then be allowed to dictate location of a line without any regard for the minority of landowners.

QUESTIONS (AND/OR DISCUSSION) BY THE COMMITTEE: Senator Lynch announced that he had a problem with the DNRC who purports to represent landowners. He reported that he had made a check of the vote of the House of Representatives and virtually every single legislator, regardless of political party, who are representatives of "landowners" supported HB 397. The opponents were not from the landowner representatives. Sen. Lynch then asked Mr. McIntyre to explain why the department would feel that they know more than the elected representatives. Mr. McIntyre stated that the DNRC represents no one, but the department was charged by the legislature to do a job, part of which is to insure that landowners have input into the process. Mr. McIntyre suggested that the House vote may have been characterized by misinformation. He stated that originally 50 kv lines were exempted under MFSA, but as a result of compromising, determination was made that 69 kv lines would also be exempt. In Montana there are fewer than 100 miles of 100 kv or more transmission lines owned by co-ops. Most of the lines built for the co-ops were built by Western Area Power or Bonneville Power Administration. Those entities would become exempt under HB 397. WAP and BPA would still have to go through environmental review under federal laws; therefore, Mr. McIntyre said, amount of review time will not be changed anyway. The only transmission lines that have come under the department's review that are electric co-op lines

since the change was made have been processed in four months by DNRC. Mr. McIntyre stated the certificates were issued but, because of REA restrictions, the lines were not built.

In reply to Senator Lynch's next question, Mr. McIntyre stated that major facilities -- large transmission lines, generating plants, etc. -- would still be included under MFSA.

Senator Lynch mentioned that, to the average person driving down the road, there is no noticeable difference between a 69 kv line and a 100 kv line. Responding to that statement, Mr. McIntyre assured the committee members that it is wrong to say that there are no impacts.

Sen. Lynch reported calling landowners in his area and stated that they are proponents of HB 397.

Mr. McIntyre then said that the department has been involved with landowners for 14 years and that all the landowners who have taken advantage of the MFSA would tell committee members that the act protects them.

In reply to a question from Senator Severson, Mr. Wittich explained the process of siting a line: 1) determine the need; 2) negotiate with landowners as to be location; 3) get right-of-way; 4) build the line. Mr. Wittich stated that MPC would try to avoid condemnation at all costs; however, occasionally the company might still have to condemn under the act.

Senator Hofman said he was confused because of the conflicting statements between Rep. Patterson who said landowners were having more say under HB 397 and Mr. Wittich's statement that landowners would have less say. Rep. Patterson referred Sen. Hofman to the new language on page 4 of HB 397 that states landowners would have a chance to become involved in the negotiations.

Senator Weeding made a statement about Glengary route, and said that originally the route was grass range and that some opposition came from the Spring Creek area. He further stated that, of the total mileage on that route, there were 25% landowners and he wondered how public interest would be dealt with under HB 397 He added that there was a struggle for many months to find an alternate site which cost the company a considerable amount of money. Mr. Wittich said that without MFSA, MPC would have had to evaluate all the landowners' concerns before making a decision. The decision in the Glengary case was made by members of the board for that site.

Senator Weeding said that his point was the response was made to the public interest and not a "nose count" of landowners; and that response to public interest perhaps would not be the same under HB 397.

Senator Walker asked how many miles of various lines MPC owns. Mr. Gene Braun, MPC attorney, listed the following approximate figures:

69 kv lines	700 - 800 miles
100 kv lines	1,000 - 1500 miles
230 kv lines	800 - 900 miles
161 kv lines	1,000

CLOSING: Representative Spaeth explained that, in the beginning he was uncomfortable with HB 397, but with the amendments, he feels it is a good measure. He stated also that 75% of the landowners is a very high standard. Referring to Senator Weeding's comments, Rep. Spaeth said that sometimes public interest judgment calls by DNRC have been very close, i.e., 51% may cause BNRC to site line in one place. With HB 397 in effect, landowners affected would be able to negotiate which places a heavy burden on the Montana Power Company to negotiate individually with landowners. He then announced that Senator Jacobson would like to carry HB 397 in the Senate.

Senator Keating, Chairman, then announced that the hearing for HB 397 was closed.

CONSIDERATION OF HOUSE BILL 246: Representative Cobb, House District 42, sponsor of HB 246, explained that it would require written notice of public hearing be sent to all royalty and mineral owners by the person who applies to establish a well spacing unit or who applies to pool all interests in a well spacing unit.

PROPONENTS: Tom Butler, attorney for the Department of State Lands, stated that he was appearing before the committee as a private citizen on his own time and explained that he had requested Representative Bulger to sponsor HB 246. He also stated that "spacing" establishes area that can best be drained by one well to conserve pressure. "Pooling" he said establishes a fraction of production that each surface owner receives and, under current law, notice is only published in newspapers and oil and gas journals. Mr. Butler made it clear that HB 246 makes it fairer for the royalty owner to receive written notice and cited a case in Oklahoma whose law was the same as Montana's current law and whose courts said that NOTICE HAS TO BE GIVEN TO ROYALTY OWNERS and to only give notice by newspaper publication is unconstitutional.

DISPOSITION OF HOUSE BILL 246: Senator Keating, Chairman, explained that most leases have a pooling clause in them. However, most operators go through the formal process of obtaining a communitization agreement with a written contract that is sent out to all royalty owners.

Senator Anderson moved that HB 246 BE CONCURRED IN. The motion CARRIED by a majority vote, with Senator Halligan voting "no."

CONSIDERATION OF HB 397: Senator Halligan had questions concerning costs that Montana Power Company incurred and asked Mr. Wittich for the marginal costs of MFSA compliance. Mr. Wittich said that Gene Braun had calculated some figures and broke down the costs for the Central Montana Project and Laurel to Bridger Project; and costs were itemized year by year from 1981 to 1986. Mr. Wittich explained that costs included environmental assessments by MPC and consultants, utility siting applications, and centerline approval costs. The Central Montana Project amounted to $487,000 and the Laurel to Bridger Project total was $284,000; and the Laurel to Bridger Project did not have centerline approval to date. Mr. Wittich indicated he would make copies of the cost accounting and make them available to the committee members. He reiterated that costs referred to in the report are environmental costs that disagree with Mr. McIntyre's testimony.

Senator Halligan said he did not understand why there was opposition if MFSA is a "give/take" process for landowners. Mr. Wittich, MPC, explained that the environmental impact is not the criteria for decision making -- "siting by environmental impact is really siting by ear" -- that is to say that whoever shouts the loudest at DNRC has the most influence. He also stated that HB 397 would give MPC the incentive to work with landowners rather than DNRC. Senator Halligan then commented that MPC is a good corporate citizen but, after dealing with 75% of the landowners, questioned what would happen to the other 25% of landowners. Mr. Wittich said it is a fallacy to think MPC would ignore the 25% and said the MPC condemns more land at present because of DNRC.

In response to Senator Halligan's next question, Mr. Wittich stated that less than 10% of the land is condemned. Condemnation proceedings take a long time and costs are prohibitive.

Senator Keating, Chairman, questioned if 69 kv lines were still being installed, and Mr. Braun, MPC, reported that the line to Jardine was 69 kv. He indicated that 90% of the land on the Jardine route was Forest Service property.

Senator Hofman made a query about the discrepancy in cost figures between the DNRC and the MPC. Mr. McIntyre said he didn't know how the Montana Power Company figures were contrived and that much of the money MPC had used had been in essentially dealing with the landowners. He suggested that someone should ask the MPC if HB 397 were passed, if it would mean that the Montana Power Company would not have such high expenditures. If after negotiating with landowners and agreements are not reached with 75% of them, Mr. McIntyre said that MPC costs would increase because they would have to fall under MFSA.

There being no further time for discussion, Chairman Keating adjourned the meeting at 2:57 p.m.

Thomas F. Keating

THOMAS F. KEATING, Chairman

ROLL CALL

NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date 3/11/87

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Keating, Chairman	X		
Sen. Cecil Weeding, Vice Chairman	X		
Sen. John Anderson	X		
Sen. Mike Halligan	X		
Sen. Delwyn Gage	X		
Sen. Lawrence Stimatz	X		
Sen. Larry Tveit	X		
Sen. "J.D." Lynch	X		
Sen. Sam Hofman	X		
Sen. William Yellowtail	X		
Sen. Elmer Severson	X		
Sen. Mike Walker	X		

Each day attach to minutes.

DATE March 11, 1987

COMMITTEE ON Natural Resources

VISITORS' REGISTER

NAME		BILL #	Check One: Support	Oppose
ART WITTICH	MWC	397/404	✓	
Gene Braun	MPC	397/404		
Richard Parks	BCC / NPRC	404	✓	
"	"	397		✓
Claudia Massman	MEIC	397	~~✓~~	✓
"	"	404	✓	
Tom Butler	self	HB 246	✓	
Susan Johnson	BCC (NPRC)	1+HB 397		✓
SANDY SEATON	self	HB 397		✓
STEVE WEST	DSL	HB370	✓	
~~Skiing Section Staff~~	~~self~~	HB 397		✓
Deb Brammer	MT Assn of Conservation Districts	HB 397		✓
Gary Amestoy	MT Dept of State Lands	HB 370	✓	
Don MacIntyre	DNRC	397		✓
Dorcey Heller	Montana Wildlife Fed	HB-246	✓	
Eric Ockt	Belgrade High School			
SCOTT LEHLEMANN	BELGRADE HIGH SCHOOL			
Jon Stickrod	Belgrade High School			
Jerry Jack	MT Stockgrowers	HB 397		✓
Sunlake West	DNRC	397		✓
Stan Bradshaw	self	397		✓
Ward Shanahan	CHEVRON Corp	397	✓	
GEORGE OCHENSKI	MT. ENV. INF. CNTR		✓ HB 370	✓ 397 HB
Pat Melby	Self and Beaver Creek Parks	397		✓
Ted Rollins	ASARCO, INC	HB 397	✓	
Tom Tully	NPRC	HB 397		✓
Jeanne-Marie Souvigney	MT Sierra Club	397		✓

(Please leave prepared statement with Secretary)

DATE March 11, 1987 (page 2)

COMMITTEE ON Natural Resources

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Jan Cool	Exxon	#246	✓	
John Patterson	HD 97 Yellowstone County	397	✓	
Dean A. Peterson	Land Owner	397		✓
Rose Toole	LWVMT — Self	397		✓
Stan Bradshaw	Trout Unlimited	370	✓	
Janelle Tailan	MT Petroleum Assoc	#6246	✓	

(Please leave prepared statement with Secretary)

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE March 11, 1987
BILL NO. HB 397

PROPOSED AMENDMENTS TO HB 397

1. Page 4, line 14.
Following: "~~161~~"
Strike: "115"
Insert: "69"

2. Page 4, lines 19 through 25.
Following: line 18
Strike: lines 19 through 25 in their entirety
Insert: "(II) does not include an electric transmission line with a design capacity of more than 69 kilovolts and up to and including 115 kilovolts for which the person planning to construct the line has obtained right of way agreements or options for a right of way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;"

3. Page 6, line 17.
Following: "THE"
Strike: "APPLICANT"
Insert: "person planning to construct the transmission line"

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE March 11, 1987
BILL NO. HB397

3/9/87

TESTIMONY BEFORE THE SENATE NATURAL RESOURCE COMMITTEE
ON HB 397, WHICH INCREASES THE KILOVOLT THRESHOLD
FOR THE PURPOSE OF DEFINING A "MAJOR" TRANSMISSION FACILITY

Currently, transmission lines with a design capacity greater than 69 kilovolts (kV) are "facilities" and persons constructing them are subject to regulation under the Major Facility Siting Act (MFSA). We believe the 69 kV design capacity limit is arbitrary; and, therefore, needs to be reexamined so that only "major" transmission line facilities are regulated. House Bill 397 allows the legislature to take a needed "fresh look" at the design capacity limit, and to increase the limit and regulate only those facilities imposing impacts that are truly major.

The cost of siting (in both time and money) a line that is regulated can be staggering. For a 30 mile, 100 kV line, the cost of compliance can exceed $500,000. The time required to complete the MFSA process can easily exceed two years.

Why are costs so great under MFSA? The answer is that the process is cumbersome. Compliance with MFSA requires: extensive data gathering by the applicant, preparation of draft and final environmental impact statements by the Department of Natural Resources and Conservation (DNRC), conducting a contested case hearing, awaiting a certificate decision by the Board of Natural Resources and Conservation (BNRC) regarding the environmental compatibility and public need of the transmission line, further data gathering by the applicant on site specific centerline considerations, preparation of a centerline location report by the DNRC and, finally, the awaiting of a decision by the BNRC approving the centerline. The benefits of this involved process undertaken to site smaller transmission lines, simply, do not justify the extensive commitment of time and money.

Through the MFSA, the public can become involved in examining whether or not the transmission line is needed. This is valid public policy for truly major transmission facilities. For a smaller transmission facility, however, this review is unnecessary.

Smaller transmission facilities are not built unless present data and forecasts show that there is a need to provide more energy to meet growth of to provide system reliability. Interestingly, of all the applications for transmission facility certificates, none has ever been denied based on a lack of evidence proving need.

The second major issue under MFSA is environmental impacts. Environmental data is gathered and reviewed through the MFSA process to ensure the transmission line is sited with "minimum environmental impacts." The opportunity for utility companies to construct a straight line transmission facility between points A & B are long gone. However, an environmental analysis would be conducted regardless of MFSA. The Montana Power Company, for example, employs an environmental department to evaluate sites for proposed transmission facilities. Choosing the path of least resistance in order to reduce the need to expend time and money is preferable to expending time and money in condemnation actions. Public relations and public acceptance of facilities are now standard company policy goals.

When all factors are considered, the costs of siting smaller transmission lines far outweigh the benefits derived from the process. In fact, the benefits are available without the complicated matrix of regulation imposed by the MFSA.

As amended, HB 397 would allow utilities to "opt out" of the MFSA process for 100 kV and 115 kV transmission lines, upon notice to persons residing in the area of the facility and the DNRC. This notice must be given at least 180 days before right of way acquisition and must include a summary describing the facility and the rights of the property owners. Additionally, the utility must acquire 75% of the right of way (based on both population and property length) before an opt out is authorized. This quantum of right of way purchase is strong evidence of cooperation between the utility and the directly affected landowners and, therefore, ensures the facility is sited in an environmentally sound manner.

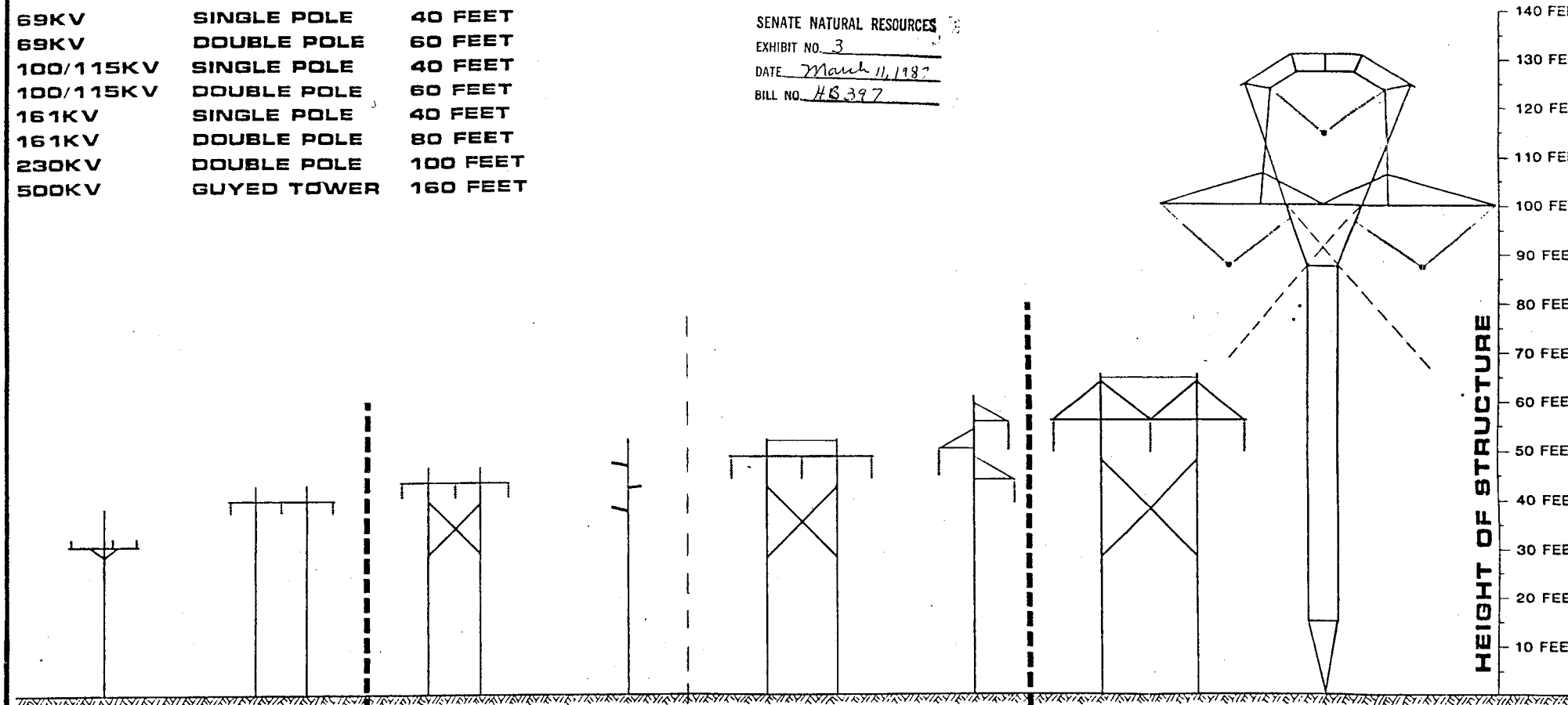
In closing, HB 397 does not radically change the facility siting process. If this bill passes, truly major facilities (large transmission lines, generating plants, coal gasification

plants, etc.) would still need a certificate of environmental compatibility and public need before construction. Enactment of HB 397 will facilitate continuing efforts of utility companies like The Montana Power Company to provide reliable electric service in a timely and cost effective manner without causing any harm to the public or to the environment.

The Montana Power Company
Arthur V. Wittich

VOLTAGE	STRUCTURE	R/W WIDTH
69KV	SINGLE POLE	40 FEET
69KV	DOUBLE POLE	60 FEET
100/115KV	SINGLE POLE	40 FEET
100/115KV	DOUBLE POLE	60 FEET
161KV	SINGLE POLE	40 FEET
161KV	DOUBLE POLE	80 FEET
230KV	DOUBLE POLE	100 FEET
500KV	GUYED TOWER	160 FEET

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE March 11, 1987
BILL NO. HB 397



THE MONTANA POWER COMPANY
TYPICAL TRANSMISSION STRUCTURES

EXHIBIT 3
MPC (w. Hich)

February 18, 1987

BEST COPY
AVAILABLE

Representative John Patterson

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE March 11, 1987
BILL NO. H.B. 397

Dear John:

On January 28, 1987, the members of Central Montana Power Cooperative voted to support HB 397 by Gary Spaeth and Fred Thomas.

The original bill would exclude 115 KV and 161 KV transmission lines from the Major Facilities Siting Act.

Your support of this bill would be sincerely appreciated by all the 14 member rural electric cooperatives of Central Montana including Yellowstone Valley Electric Cooperative.

As of ~~Jan~~ now the bill has been amended whereby it excludes only 115 KV and under from the siting act, if utilities and landowners are able to reach agreements. Please feel free to use this letter on the floor.

Respectfully
Jim Tollenaar

NAME Ward A. Shanahan BILL NO. HB 397

ADDRESS 301 First Nat'l Bank, Helena DATE 03/11/87

WHOM DO YOU REPRESENT Chevron Corporation

SUPPORT XXX OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE NATURAL RESOURCES
EXHIBIT NO. 5
DATE March 11, 1987
BILL NO. HB 397

Comments:

Mr. Chairman and Members of the Committee:

Thank you for allowing me to present the prepared statement of Mr. Joe Dewey, the Project Manager of the Stillwater Mine at Nye. I'm the registered lobbyist for Chevron Corporation, whose subsidiary, Chevron Resources, is the managing partner for this important new platinum mine. I'll try to answer any questions you may have about Mr. Dewey's statement. For those questions I can't answer, I'll be pleased to get the answers for you as soon as I can.

Respectfully,

Ward Shanahan

Ward A. Shanahan
442-8560 (Helena)

4278W

HB 397
Senate Natural Resource Committee

March 11, 1987

Mr. Chairman and members of the Committee:

My name is Joe Dewey. I'm project manager for Chevron Resources the managing partner of Stillwater Mining Company. The company is completing construction of a 500 ton per day Platinum mine at Nye, Montana.

I appreciate the opportunity to appear here today in support of HB 397 which is really an economic growth and jobs bill. Let me explain. Our company is planning to expand its mining operation to 1000 tons per day as soon as it can get the electric power to do so. This expansion can provide an additional 150 jobs. But the present limitation on power lines without a full Major Facility Siting Act review will prevent this from happening for at least two years.

The company also has plans for a similar mine in Sweetgrass County which will require at least a 115 KVA power line. This mine will be subject to review under the Hard Rock Mining Impact and Reclamation Acts. A further review of the power line under the Major Facility Siting Act would be a costly and unnecessary delay.

I strongly support a DO PASS recommendation on HB 397. I hope you will all give it your unqualified approval. Thank you very much.

4276W

SENATE NATURAL RESOURCES
EXHIBIT NO. 6
DATE March 11, 1987
BILL NO. HB397

TESTIMONY OF DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION--HB 397
SENATE NATURAL RESOURCES COMMITTEE

The Department of Natural Resources and Conservation opposes HB 397 because it removes from the public review process some of the major transmission lines being built in Montana.

The bill as it was originally introduced exempted 100 KV, 115 KV and 161 KV transmission lines from public review that the Siting Act affords landowners. That is still the intent of this bill. Passage of the bill would return Montana to a pre-1973 process whereby a utility condemns a landowner's property after the utility determines what it considers to be the best route for these lines. These amendments afford the landowner absolutely no protection, entitle the landowner to no mitigation, such as control of weeds along the right-of-way and give the landowner no greater rights than they are entitled to in a condemnation proceeding, i.e., just compensation.

The lines proposed to be exempted from the Siting Act are part of the bulk transmission grid and are designed to move large amounts of power from where it is generated to substations for distribution to areas of load. For example, a 115 KV line is capable of moving the entire output of Canyon Ferry Dam. There is generally not a direct benefit to the landowner whose land is crossed by one of these lines as is the case with power poles that run through your property and provide you with

electricity. Consequently, landowners must live with the impacts of these lines on their property without any commensurate benefits.

These lines do have impacts to landowners and agricultural operations. In many cases because there are more poles per mile with lower ground clearance, these smaller lines have more impact to agricultural operations than with larger lines. The Siting Act provides affected landowners with an opportunity for input into the utility decision regarding the location of these transmission lines and for development of measures to mitigate the impacts of these lines to not only landowners, but also to public resources.

In the absence of any public process, such as the Siting Act, landowners will have no legally enforceable say in the construction or location of a line through their property. The landowner can negotiate compensation with the utility, but he cannot negotiate the line off of his property or influence easements granted by his adjacent neighbors that will impact him. This is because a utility can take a landowner's property through condemnation proceedings in the courts. The net effect of not having a public review process for these lines is to subordinate a landowner's property rights to a utility's right to proceed with condemnation in court.

The arguments advanced for this bill center on the costs that the Siting Act process imposes on the utility's costs of doing business. The BNRC adopted rules in 1985 that cut an applicant's costs by relying heavily on existing published data

electricity. Consequently, landowners must live with the impacts of these lines on their property without any commensurate benefits.

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The arguments advanced for this bill center on the costs that the Siting Act process imposes on the utility's costs of doing business. The BNRC adopted rules in 1985 that cut an applicant's costs by relying heavily on existing published data

and limiting the geographic area to be studied to the area that would be impacted. Since the adoption of comprehensive siting rules in 1985, the DNRC has offered to work with both MPC and the co-ops to continue to look for ways to lower the costs of Siting Act compliance on small transmission lines. To date no one has taken DNRC up on this offer. In fact the DNRC agreed to work with the co-ops through the Montana Associated Utilities on this exact issue. The co-ops agreed to form a task force to work with DNRC. Yet they have not appointed this working group.

MPC in its testimony stated it cost them $500,000 to comply with the Major Facility Siting Act on the Central Montana 100 KV transmission line project. That cost may be the cost of designing, engineering and surveying the line, but it is not the cost to comply with the Siting Act. Compare MPC's stated costs with those of the state. DNRC's costs of evaluating need, studying environmental impacts and alternate locations for the facility, conducting public meetings, writing a draft and final EIS and holding contested case hearings, including paying for hearings examiner and Board expenses, was $91,000. This is nearly four and one-half times less than what MPC states it cost them to do its siting work.

The DNRC's costs on the Laurel to Bridger 100 KV line were only $49,000, while MPC has stated it cost them $400,000 to comply. This is over seven times as much as DNRC spent.

These figures are a far cry from the figures used to support this bill. It may be concluded that either MPC is including the engineering, design and survey costs in their figures, the Department is far more efficient than MPC in doing its siting work, or MPC has spent a tremendous amount of money fighting local landowners over the location of these facilities.

Montana Power Company in sworn testimony has stated the Siting Act costs are not significant to their operations. In the Central Montana transmission line hearing, MPC testified "The same is true, I think, of costs of the facility. $200-250,000 to some people is a major issue. It is an important issue. The communications is an important one. But to me they are not major." The MPC, thus, equated $200-250,000 in additional costs to the impacts of a transmission line on communications. If these are equivalent, how can the MPC now assert that there are few important impacts from these lines.

These examples highlight that many of the costs attributed to the Siting Act are costs that will be incurred anyway and that the true costs of Siting Act compliance are less than stated by MPC and the impacts are greater. These costs are simply a factor that enters into the equation of building transmission lines whether this bill passes or not.

What is really at issue here today is a corporate philosophy that does not respect landowner involvement in corporate decisions even though the decisions affect landowner concerns. In the Central Montana project, MPC did not consult with potentially affected landowners prior to selecting their final

preferred route. In MPC's testimony on Central Montana, the MPC stated that "there might be some benefit (to contacting landowners), but there are also some real problems with it." When MPC discovered, through public meetings conducted by DNRC under the Siting Act, that landowners in the area preferred a route that was different than theirs, the utility did not attempt to work with affected landowners to reach a compromise or see if there was the possibility of reaching a consensus among the affected groups. Instead MPC spent considerable sums of money doing studies and providing testimony for the record to discredit the concerns and claims of these affected landowners.

In its testimony on the project, MPC discounted landowner input as nothing more than "strategic behavior" and suggested that, "public reaction now may be no more than sophisticated smoke screens whose major objective is 'to keep the line out of my back yard.'" The utility spent its resources on expert witness after expert witness trying to convince the Board that the local landowners were wrong. They spent their money fighting for a corporate routing decision rather than working with affected landowners.

And what did the landowners that were going to be affected want? They simply wanted MPC to build the transmission line along an abandoned railroad right-of-way as opposed to crossing their agricultural properties.

Do the landowners' desires in this case sound like strategic behavior? Were their wishes nothing more than a, "sophisticated smokescreen whose major objective is to to keep the line out of

my back yard," as MPC testified in Lewistown? Or were their concerns legitimate? Was the railroad right-of-way, in fact, a siting opportunity?

Didn't the railroad right-of-way promise fewer impacts than crossing cultivated agricultural lands where no transmission lines now exist? The manager of the Fergus Electric Co-op thought so. Drawing on his experience in the utility business, he testified on behalf of the landowners in opposition to the MPC preferred route.

Had MPC ignored the railroad right-of-way? No. They testified that they had evaluated the railroad right-of-way and in their view "there were a number of corridors that were better than the railroad route."

Ask yourself what might have happened to these landowners if this bill had been in effect? This is one major reason why MPC's costs rose so high in the Central Montana project. They decided to fight the landowners.

Fortunately for the landowners, the Siting Act provided them an opportunity to convince the Board that their claims were legitimate. The Board ultimately endorsed the route preferred by the landowners as the route that minimizes impacts given the other alternatives.

This bill is a reaction to the Central Montana project and the ability of affected landowners to participate in the Siting Act process and prevail against the utility--an option that does not exist in a condemnation court proceeding. In fact, if this

bill passes, MPC can ignore the certificate approved by the Board for the Central Montana project and proceed under this bill.

This bill started out in the House as an exemption bill for certain bulk transmission lines, but was then amended in an apparent attempt to address landowners' concerns. That is not what these amendments do. This bill holds out a hope that utilities have an incentive to work with local landowners and that it is to their advantage to do so. But that is not the history of siting in Montana. The utility that urges this bill, the MPC, is the same company that spent thousands of dollars fighting landowners on the Central Montana project.

The Siting Act process is issue driven, which means DNRC concentrates its time and efforts looking at areas of public concern. DNRC does not allocate much time looking at issues that are not of concern to the public or the applicant. Issues that cause the most concern usually occur in very limited geographic areas. These areas are where land use intensifies and siting causes greater impact. The options to siting are usually limited in these areas.

In the Central Montana project the primary area of concern was the landowners along Beaver Creek, less than six miles of the 32 mile project. In the Laurel to Bridger line the main area of concern was the area between the Clark's Fork and the Yellowstone River, two miles out of 28. In the proposed Roundup to Ivanhoe transmission line it is likely to be the one or two miles through Roundup that will be the area of concern.

In none of these instances would the amount of land crossed or the number of landowners affected be greater than 25 percent of the total distance of the line. Yet these are the areas that were or will be most affected by the transmission line. This is why the 75 percent provision fails to give the truly affected landowners any protection. The 25 percent that do not agree with the utility are the most likely to be impacted by the line. These landowners will not have a say in the routing decision affecting their land because others along the route have agreed to rights-of-way with the utilities. Isn't this why the Siting Act was initially enacted--to allow every affected landowner an opportunity to participate in siting decisions?

The DNRC opposes HB 397. The primary reason is that affected landowners will not have a say in routing decisions that affect their land. Even if 75 percent of the landowners along a route agree to grant easements, this does not guarantee the other 25 percent of the landowners any say in the routing decisions across their lands. In fact, this bill not only subordinates the property rights of these landowners to the utility's right to proceed with condemnation proceedings in court, it also subordinates their rights to decisions made by their neighbors. I urge the Committee to give HB 397 a "do not pass" recommendation.

In closing, I make one final observation. MPC in this bill assails the need for Siting Act review of smaller transmission lines. Yet, in a sworn statement by its director of electrical engineering in the Laurel to Bridger hearing, the MPC stated as

a matter of record that "I think the Major Facility Siting Act is a real step forward. It allows for public input, public participation and a decision by the Board of Natural Resources on need and environmental compatibility." I seriously doubt the value of public participation has diminished over the last year when no transmission lines were proposed to the extent that siting decisions should return to the exclusive domain of the corporate board room, where the landowner has no right to participate.

My name is Dean Peterson and I am from Judith Gap, Mt. I recently and am currently involved in working with the Montana Facility Siting Act concerning a 100 KV transmission line from Judith Gap Substation to the Glengary substation. I farm and ranch in the Judith Gap area in which several corridors were proposed. Through landowners efforts working through the Mt.F.S.A. hearing process we were able to show the builders of the transmission line that their No. 1 proposed corridor was not in the best interest of all parties concerned. I know that the Mt.F.S.A. works. To dilute the Mt.F.S.A. would take away input by Montana property owners. The present process gives all parties concerned equal input.

Though my experience on the Judith Gap to Glengary transmition line I found the builders of the 100 KV line had not phyicaly looked at the routes, and used outdated maps. In other words, the representatives of MPC and their so-called experts had not thoroughly done their homework.

The proposed changes would take the checks and balances out of the system. That would be doing a great disserice to the people and property owners of Montana.

I do not feel that the admendments you have made to this bill make it any better. I feel that all owners of the land affected should have public input not just a portion, and a time limit is so important because a waiting game can be played in which after 10 years or so the land changes hands or is all bought up. All newspaper notices should tell landowners rights and not refer landowners to someone else.

In conclusion, I ask that you say no to HB 397, because I know that the Montana Facility Siting Act works.

SENATE NATURAL RESOURCES
EXHIBIT NO. 7
DATE March 11, 1987
BILL NO. HB 397

Montana Association Of Conservation Districts

1 South Montan
Helena, Montana 5960
Ph. 406-443-5711

HB 397

Mr. Chairman, members of the Committee, my name is Debi Brammer. I am the Executive Vice President for the Montana Association of Conservation Districts.

The Association would like to go on record as opposing HB 397. This bill has the potential to cause serious problems for landowners since there is the real possibility that a utility may route a transmission line across a landowner's property and the landowner would not have a say in the process. By not having the opportunity to participate in the utility line route an individual could have forced upon them a route that may have serious effect on his/her farming operation. This may not only change farming operations which could directly effect income but also have a serious impact on soil and water conservation activities.

The only way to protect landowners' rights to participate in transmission line routing decisions is to retain full Siting Act review of these transmission lines.

We urge a do not pass for HB 397.

Thank you.

Debi Brammer

Debi Brammer

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE March 11, 1987
BILL NO. HB 397

BEAR CREEK COUNCIL

SENATE NATURAL RESOURCES
EXHIBIT NO. 9
DATE March 11, 1987
BILL NO. House Bill 397

Testimony in opposition to HB 397, presented to Senate Natural Resources Committee, March 11, 1987 by Sue Johnson, President, Bear Creek Council

Mr. Chairman and members of the Committee, for the record, my name is Sue Johnson, and I'm the President of Bear Creek Council. Bear Creek Council is a citizens group made-up of ranchers, outfitters, small business people and others, most of whom are property owners. Mr. Chairman, we oppose HB 397.

Members of the Committee, many of our members are property owners along the possible location of an upgraded power line to the proposed Jardine Joint Venture Gold mine. We want to make it clear, that we have never opposed this project, but have wanted to make sure that it developed with the minimum impact on our right to make a living. One of our long time major concerns has been whether our members might be facing condemnation for a possible transmission line.

Mr. Chairman, a public review is essential to assure that impacts of transmission lines are minimized to landowners along the route, and that the selected route represents the least possible impact.

This public review is essential for landowners, because of the aforementioned right of utilities to use condemnation. Without any public review process, landowners property rights would be secondary to the utilities right to proceed with a condemnation action in court without the landowner having any say in siting location!

Mr. Chairman, we truly don't feel that this bill would necessarily be doing the utilities any great favor. If you have a public review and look at the various alternatives and come up with the "best" rout you greatly lesson the chance for problems, especially litigation at later date. So you can save the utilities money in the long run by defeating this bill. Thank you, Sue Johnson

Exhibit 9

The Montana Environmental Information Center Action Fund

• P.O. Box 1184, Helena, Montana 59624 (406)443-2520

SENATE NATURAL RESOURCES
EXHIBIT NO. 10
DATE March 11, 1987
BILL NO. HB 397

March 11, 1987
Senate Natural Resources Committee
Re: HB 397

Mr. Chairman, members of the committee, my name is Claudia Massman. I represent the Montana Environmental Information Center here today. We oppose HB 397, because it denies the public the opportunity to participate in the decision to construct and locate certain major facilities now included in the Major Facility Siting Act.

"Major facility" is currently defined to include transmission lines with a capacity greater than 69 kv. HB 397 would exclude from the Siting Act transmission lines with a capacity of 100 and 115 kv. The majority of lines now being built in Montana fall within the range that HB 397 seeks to exempt. Exempting these lines from the public review process, is an attempt to circumvent the purpose of the Siting Act to ensure the protection of our our environment to mitigate adverse impacts affecting people and their environment.

The purpose of the Siting Act is to balance the public need for energy with the public's right to a clean and healthful environment. The law recognizes that the construction of major facilities may have significant adverse impacts on the environment and on the welfare of citizens. Balancing these competing interests is achieved through the public review process.

Public review protects the environment in this manner. Initially the utility must prove that the proposed facility is actually needed. Implicit in this requirement is the fact that utilities should consider all options before building transmission lines. For instance, in Columbia Falls, public participation avoided the initial decision to build transmission lines by showing that there was no need for them. Public participation can also force the utility to clarify its reason for building a new facility. This process ensures an informed decision.

Under HB 397, landowners will no longer have a right to protest the need and location of a proposed 100 or 115 kv line. Instead, the utility will be able to exercise its right of eminent domain and condemn private property for construction of these lines. The landowner can only contest

EXHIBIT 2

the value of his condemned property during a condemnation proceeding. Concerns regarding the preferred site or actual need for the lines cannot be raised. Concerns over mitigation of adverse environmental impacts are also preempted by HB 397. Utilities will be able to select a preferred alternative on the basis of economic considerations alone, without regard to environmental consequences or landowners' interests.

If utilities are concerned about unnecessary delay or cumbersome procedural requirements of the Siting Act, a solution might be a rule making proceeding where utilities can negotiate to change the rules. Eliminating public review is unwise.
Therefore, we urge that you vote against HB 397.

Testimony against HB 397, transmission line exemption from Montana's Major Facility Siting Act.

SENATE NATURAL RESOURCES
EXHIBIT NO. 11
DATE March 11, 1987
BILL NO. HB 397

March 11, 1987

Mr. Chairman and members of the committee, my name is Sandy Seaton, and I live in Livingston, Montana and work in Park County as a ~~outfitter~~ guide.

Mr. Chairman, Park County has recently, and promises to be, the site of increased development activity. This activity comes from proposed mineral development, expansion of the Church Universal Triumphant, and expansion of facilities that service Yellowstone National Park. These all need power!

Mr. Chairman, I'm not sure that I understand this bill, particularly as it relates to "property owners", their rights and their options?

It would seem to me that several large property owners would have the major say as to whether a transmission line falls under the Siting Act or not? What happens if you have several large property owners, ones who own most (75%) of the land along a proposed centerline, but as the line approaches a town, such as Livingston, where you have smaller lots, but a lot more concentrated development, Would all the owners of these small lots have an equal say in a lines location?, Or whether it falls under the Siting Act?
I would sure appreciate if one of you would ask the sponsor to explain what happens in this kind of situation?

Mr. Chairman, I'm not a lawyer, but I understand that the right of condemnation is narrowly given to those that show that their need is truly a "public use". Well, if thats the case, then anything that could possibly lead to the taking of someones property should be open to public review and in this case that means should fall under the Siting Act. Thank you for your time, and I hope someone will answer my questions.

NAME Jerry Jack BILL NO. HB 397

ADDRESS PO Box 1679 DATE 3/11/87

WHOM DO YOU REPRESENT Montana Stockgrowers

SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SENATE NATURAL RESOURCES
EXHIBIT NO. 12
DATE March 11, 1987
BILL NO. HB 397

Comments:

We oppose passage of this bill in that we feel the bill, as written, will adversely affect the rights of landowners who may oppose the line's location. If 3/4's of adjacent owners are in favor, the right of way will be issued with no further appellent rights, whether the line impacts hay fields, calving grounds, or other improvements. Landowners have adequate protection under the current facilities siting act. As such, we urge you to

Do not pass H.B. 397.

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

March 16, 1987

An Executive Session of the Senate Natural Resources Committee was called to order at 1:00 p.m., March 16, 1987, by Chairman Thomas Keating in Room 405, State Capitol.

ROLL CALL: All members were present with the exceptions of Sens. Weeding and Severson who were excused.

DISPOSITION OF HOUSE BILL 397: Passage of HB 397 would increase the kilovolt threshold for transmission lines under the Major Facility Siting Act.

Sen. Walker moved that the amendements that were presented to the committee by Rep. Spaeth, sponsor of SB 397, on March 11 be ADOPTED. Motion CARRIED unanimously.

Sen. Lynch moved that HB 397 AS AMENDED BE CONCURRED IN.

Sen. Halligan explained for the record that the large landowners would be affected by HB 397; and once the utility company would obtain 75% approval, a small landowner could be right in the middle with little or no input. Before the vote was taken, Sen. Halligan asked the committee to question in their own minds whether they believed that Montana Power Company is a good corporate citizen and would deal with all the landowners "up front."

Motion CARRIED unanimously.

DISPOSITION OF HOUSE BILL 645: Passage of HB 645 would clarify impact plan section of the Hard-Rock Mining Impact Act. Sen. Lynch moved that HB 645 BE CONCURRED IN. A Roll Call Vote was taken. There were six who voted "yes," and four who voted "no." Sens. Weeding and Severson were allowed to enter their vote in writing subsequent to the meeting. Sen. Weeding voted "no." (Exhibit 1) Sen. Severson voted "yes." (Exhibit 2)

Motion CARRIED with a majority vote.

There being no further business before the committee, Sen. Keating adjourned the meeting at 1:10 p.m.

Thomas F. Keating

THOMAS F. KEATING, Chairman

nm

ROLL CALL

NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date 3-16-87

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Keating, Chairman	✓		
Sen. Cecil Weeding, Vice Chairman			X
Sen. John Anderson	✓		
Sen. Mike Halligan	✓		
Sen. Delwyn Gage	✓		
Sen. Lawrence Stimatz	✓		
Sen. Larry Tveit	✓		
Sen. "J.D." Lynch	✓		
Sen. Sam Hofman	✓		
Sen. William Yellowtail	✓		
Sen. Elmer Severson			X
Sen. Mike Walker	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

March 16 87
19

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 397

THIRD reading copy (BLUE color)

INCREASES THE KILOVOLT THRESHOLD FOR TRANSMISSION LINES UNDER MPSA

SPAETH (JACOBSON)

Respectfully report as follows: That HOUSE BILL No. 397

BE AMENDED AS FOLLOWS:

1. Page 4, line 14.
Following: "~~161~~"
Strike: "115"
Insert: "69"

2. Page 4, lines 19 through 25.
Following: line 18
Strike: lines 19 through 25 in their entirety
Insert: "(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts and up to and including 115 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;"

3. Page 6, line 17.
Following: "THE"
Strike: "APPLICANT"
Insert: "person planning to construct the transmission line"

AND AS AMENDED
BE CONCURRED IN

~~XXXXX~~
~~DO PASS~~

~~XXXXXXXX~~
~~DO NOT PASS~~

Senator Thomas F. Keating, Chairman.

HOUSE BILL NO. 397

INTRODUCED BY SPAETH, JACOBSON, CRIPPEN, THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE UNDER CERTAIN CONDITIONS THE KILOVOLT THRESHOLD FOR THE PURPOSE OF DEFINING A TRANSMISSION LINE UNDER THE MONTANA MAJOR FACILITY SITING ACT; TO PROVIDE FOR NOTICE TO THE PUBLIC AND TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AMENDING SECTION 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less in inside diameter.

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or

REFERENCE BILL

experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection (10), including upgrading to a design capacity covered by subsection (10)(b), except that the term does not include normal maintenance or repair of an existing facility.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated

cost in excess of $10 million;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of $10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $10 million; or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 ~~161~~ ~~115~~ 69 kilovolts, except that the term:

(I) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; AND

~~(II) DOES INCLUDE AN ELECTRIC TRANSMISSION LINE WITH A DESIGN CAPACITY OF MORE THAN 69 KILOVOLTS AND UP TO AND INCLUDING 115 KILOVOLTS FOR WHICH OWNERS OF MORE THAN 25% OF THE OWNERS OWNING MORE THAN 25% OF THE PROPERTY COMPRISING THE PROPOSED CENTERLINE LOCATION HAVE NOT AGREED WITH THE APPLICANT TO A RIGHT-OF-WAY OR AN OPTION FOR A RIGHT-OF-WAY FOR THE CENTERLINE LOCATION ON THEIR PROPERTY;~~

(II) DOES NOT INCLUDE AN ELECTRIC TRANSMISSION LINE WITH A DESIGN CAPACITY OF MORE THAN 69 KILOVOLTS AND UP TO AND INCLUDING 115 KILOVOLTS FOR WHICH THE PERSON PLANNING TO CONSTRUCT THE LINE HAS OBTAINED RIGHT-OF-WAY AGREEMENTS OR OPTIONS FOR A RIGHT-OF-WAY FROM MORE THAN 75% OF THE OWNERS WHO COLLECTIVELY OWN MORE THAN 75% OF THE PROPERTY ALONG THE CENTERLINE;

(c) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of $750,000;

(e) any underground in situ gasification of coal.

(11) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a

proposed transmission line.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

NEW SECTION. SECTION 2. NOTICE REQUIREMENT FOR CERTAIN ELECTRIC TRANSMISSION LINES. WHENEVER A PERSON PLANS TO CONSTRUCT AN ELECTRIC TRANSMISSION LINE OR ASSOCIATED FACILITIES OF A DESIGN CAPACITY OF MORE THAN 69 KILOVOLTS AND UP TO AND INCLUDING 115 KILOVOLTS THAT IS MORE THAN 10 MILES IN LENGTH, PUBLIC NOTICE MUST BE PROVIDED TO PERSONS RESIDING IN THE AREA IN WHICH ANY PORTION OF THE ELECTRIC TRANSMISSION FACILITY MAY BE LOCATED AND NOTICE MUST BE PROVIDED TO THE DEPARTMENT. THIS NOTICE MUST BE MADE NO LESS THAN 180 DAYS PRIOR TO THE COMMENCEMENT OF ACQUISITION OF RIGHT-OF-WAY BY PUBLICATION OF A SUMMARY DESCRIBING THE TRANSMISSION FACILITY AND THE PROPOSED LOCATION OF THE FACILITY IN THOSE NEWSPAPERS THAT WILL SUBSTANTIALLY INFORM THOSE PERSONS OF THE CONSTRUCTION AND BY MAILING SUCH A SUMMARY TO THE DEPARTMENT. THE NOTICE MUST INFORM THE PROPERTY OWNERS THAT THEY HAVE CERTAIN RIGHTS CONCERNING THE LOCATION OF THE FACILITY AND THAT MORE INFORMATION CONCERNING THEIR RIGHTS CAN BE OBTAINED FROM THE DEPARTMENT OR THE ~~APPLICANT~~ PERSON PLANNING TO CONSTRUCT THE TRANSMISSION LINE.

NEW SECTION. Section 3. Extension of authority. Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. SECTION 4. CODIFICATION INSTRUCTION. SECTION 2 IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 75, CHAPTER 20, PART 2, AND THE PROVISIONS OF TITLE 75, CHAPTER 20, PART 2, APPLY TO SECTION 2.

NEW SECTION. Section 5. Effective date. This act is effective on passage and approval.

-End-

HOUSE BILL NO. 397

INTRODUCED BY SPAETH, JACOBSON, CRIPPEN, THOMAS

A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE UNDER CERTAIN CONDITIONS THE KILOVOLT THRESHOLD FOR THE PURPOSE OF DEFINING A TRANSMISSION LINE UNDER THE MONTANA MAJOR FACILITY SITING ACT; TO PROVIDE FOR NOTICE TO THE PUBLIC AND TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; TO PROVIDE FOR VERIFICATION OF LANDOWNER CONSENT; AMENDING SECTION 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment which would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted hereunder.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less in inside diameter.

(4) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(5) "Board of health" means the board of health and environmental sciences provided for in 2-15-2104.

(6) "Certificate" means the certificate of environmental compatibility and public need issued by the board under this chapter that is required for the construction or operation of a facility.

(7) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if such activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or

REFERENCE BILL: INCLUDES GOVERNOR'S AMENDMENTS DATED 4-7-87

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other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by (b) or (c) of subsection (10), including upgrading to a design capacity covered by subsection (10)(b), except that the term does not include normal maintenance or repair of an existing facility.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Department of health" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(10) "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 50 megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental

sciences added to an existing plant) having an estimated cost in excess of $10 million;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto having an estimated cost in excess of $10 million;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto having an estimated cost in excess of $10 million;

(iv) enriching uranium minerals or any addition thereto having an estimated cost in excess of $10 million; or

(v) utilizing or converting 500,000 tons of coal per year or more or any addition thereto having an estimated cost in excess of $10 million;

(b) each electric transmission line and associated facilities of a design capacity of more than 69 ~~161~~ ~~115~~ 69 kilovolts, except that the term:

(I) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; AND

~~(II) DOES--INCLUDE AN ELECTRIC TRANSMISSION LINE WITH A DESIGN CAPACITY OF MORE THAN 69--KILOVOLTS--AND--UP--TO--AND INCLUDING 115 KILOVOLTS FOR WHICH OWNERS OF MORE THAN 25% OF THE--OWNERS--OWNING MORE THAN 25% OF THE PROPERTY COMPRISING THE PROPOSED CENTERLINE LOCATION HAVE NOT--AGREED--WITH--THE APPLICANT--TO A RIGHT OF WAY OR AN OPTION FOR A RIGHT OF WAY~~

~~FOR-THE-CENTERLINE-LOCATION-ON-THEIR-PROPERTY;~~

(II) DOES NOT INCLUDE AN ELECTRIC TRANSMISSION LINE WITH A DESIGN CAPACITY OF MORE THAN 69 KILOVOLTS AND UP TO AND INCLUDING 115 KILOVOLTS FOR WHICH THE PERSON PLANNING TO CONSTRUCT THE LINE HAS OBTAINED RIGHT-OF-WAY AGREEMENTS OR OPTIONS FOR A RIGHT-OF-WAY FROM MORE THAN 75% OF THE OWNERS WHO COLLECTIVELY OWN MORE THAN 75% OF THE PROPERTY ALONG THE CENTERLINE;

(c) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities;

(d) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu per hour or more or any addition thereto having an estimated cost in excess of $750,000;

(e) any underground in situ gasification of coal.

(11) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(12) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or

switching necessary for the construction or operation of a proposed transmission line.

(13) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

NEW SECTION. SECTION 2. NOTICE REQUIREMENT FOR CERTAIN ELECTRIC TRANSMISSION LINES. WHENEVER A PERSON PLANS TO CONSTRUCT AN ELECTRIC TRANSMISSION LINE OR ASSOCIATED FACILITIES OF A DESIGN CAPACITY OF MORE THAN 69 KILOVOLTS AND UP TO AND INCLUDING 115 KILOVOLTS THAT IS MORE THAN 10 MILES IN LENGTH, IT MUST PROVIDE PUBLIC NOTICE ~~MUST BE--PROVIDED~~ TO PERSONS RESIDING IN THE AREA IN WHICH ANY PORTION OF THE ELECTRIC TRANSMISSION FACILITY MAY BE LOCATED AND ~~NOTICE-MUST-BE-PROVIDED~~ TO THE DEPARTMENT. THIS NOTICE MUST BE MADE NO LESS THAN 180 DAYS PRIOR TO THE COMMENCEMENT OF ACQUISITION OF RIGHT-OF-WAY BY PUBLICATION OF A SUMMARY DESCRIBING THE TRANSMISSION FACILITY AND THE PROPOSED LOCATION OF THE FACILITY IN THOSE NEWSPAPERS THAT WILL SUBSTANTIALLY INFORM THOSE PERSONS OF THE CONSTRUCTION AND BY MAILING SUCH A SUMMARY TO THE DEPARTMENT. THE NOTICE MUST INFORM THE PROPERTY OWNERS ~~THAT-THEY-HAVE-CERTAIN-RIGHTS~~ OF THEIR RIGHTS UNDER THIS CHAPTER CONCERNING THE LOCATION OF THE FACILITY AND THAT MORE INFORMATION CONCERNING THEIR RIGHTS CAN BE OBTAINED FROM THE DEPARTMENT ~~OR-THE APPLICANT~~

~~PERSON-PLANNING-TO-CONSTRUCT-THE-TRANSMISSION-LINE.~~

NEW SECTION. SECTION 3. VERIFICATION. (1) PRIOR TO CONSTRUCTING A TRANSMISSION LINE UNDER SUBSECTION (10)(B)(II) OF 75-20-104, THE PERSON PLANNING TO CONSTRUCT THE LINE MUST PROVIDE TO THE DEPARTMENT WITHIN 36 MONTHS OF THE DATE OF THE PUBLIC NOTICE PROVIDED UNDER [SECTION 2], UNLESS EXTENDED BY THE BOARD FOR GOOD CAUSE:

(A) COPIES OF THE RIGHT-OF-WAY AGREEMENTS OR OPTIONS FOR A RIGHT-OF-WAY CONTAINING SUFFICIENT INFORMATION TO ESTABLISH LANDOWNER CONSENT TO CONSTRUCT THE LINE; AND

(B) SUFFICIENT INFORMATION FOR THE DEPARTMENT TO VERIFY TO THE BOARD THAT THE REQUIREMENTS OF SUBSECTION (10)(B)(II) OF 75-20-104 ARE SATISFIED.

(2) THE PROVISIONS OF SUBSECTION (10)(B)(II) OF 75-20-104 DO NOT APPLY TO ANY FACILITY FOR WHICH PUBLIC NOTICE UNDER [SECTION 2] HAS BEEN GIVEN BUT FOR WHICH THE REQUIREMENTS OF SUBSECTION (1) HAVE NOT BEEN COMPLIED WITH.

NEW SECTION. Section 4. Extension of authority. Any existing authority of the board of natural resources and conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. SECTION 5. CODIFICATION INSTRUCTION. ~~SECTION 2 IS~~ SECTIONS 2 AND 3 ARE INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 75, CHAPTER 20, PART 2, AND THE PROVISIONS OF TITLE 75, CHAPTER 20, PART 2, APPLY TO ~~SECTION~~

2 SECTIONS 2 AND 3.

NEW SECTION. SECTION 6. APPLICABILITY. THE PROVISIONS OF THIS ACT DO NOT APPLY TO ANY TRANSMISSION LINES OR ASSOCIATED FACILITIES THAT HAVE BEEN CERTIFIED UNDER THIS CHAPTER PRIOR TO THE EFFECTIVE DATE OF THIS ACT.

NEW SECTION. Section 7. Effective date. This act is effective on passage and approval.

-End-